IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.03.2007

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.No.50371 of 2007

W.P.(MD).Nos.43897, 11442, 11692 of 2006, 30898 of 2005, 47132 of 2006 W.P.(MD).Nos.16, 262 of 2007, W.P.Nos.49694, 49695, 49696, 49697, 49742, 49926, 49983, 50033, 50041, 50276, 50277, 50318, 50360, 50372, 50373, 50374, 50375, 50376, 50377 of 2006, 13, 14, 34, 480, 565, 566, 567, 568, 569, 666, 673, 1374, 1795, 1937, 2018, 2416, 2584, 3063, 3950 of 2007

and

M.P.Nos.1 & 2 of 2006
& M.P.Nos.1 & 2 of 2007

S.Beer Mohamed — Petitioner in WP.50371/06
N.Jayalakshmi — Petitioner in WP.43897/06
Gunavathy — Petitioner in WP.11442/06
I.R.Jebakumar — Petitioner in WP.11692/06
K.Sowmya — Petitioner in WP.30898/05

Tamil Nadu Computer Science
B.Ed Graduate Teachers Welfare Society,
Redd. No.77/2006 rep. by its
Treasures, P.Saravanan,
No.8/21, Pujangarao Street,
Saidapet, Chennai - 15. — Petitioner in WP.47132/06

N.Barathi — Petitioner in WP.16/07
O.Susel Anand — Petitioner in WP.262/07.
Periya Naisingh — Petitioner in WP.49694/06
R.Jeyanthy — Petitioner in WP.49695/06
A.Anbalagan — Petitioner in WP.49696/06
M.Premkumar — Petitioner in WP.49697/06
S.Mathiazhagan — Petitioner in WP.49742/06

WEB COPY

1. Siva Senthil Kumar
2. R.Amudha
3. R.Jeyanthi
4. S.Palaniyandai
5. S.Banumathi
6. R.Muthuamizh Selvan

https://hcservices.ecourts.gov.in/hcservices/

7. P.Uma Maheswari
8. P.Chithirai Selvan Petitioner in WP.49926/06

S.Dhanamani Petitioner in WP.49983/06
G.B.Hemamalini Petitioner in WP.50033/06
S.Sujatha Petitioner in WP.50041/06
V.Nagarajan Petitioner in WP.50276/06
M.D.Padmavathy Petitioner in WP.50277/06
D.Elavarasu Petitioner in WP.50318/06
T.Suryanarayana Moorthy Petitioner in WP.50360/06
M.Killivalavan Petitioner in WP.50372/06
R.Saravanarajaguru Petitioner in WP.50373/06
C.Radhika Petitioner in WP.50374/06
K.Nalini Petitioner in WP.50375/06
K.Mani Kandan Petitioner in WP.50376/06
P.Renuga Petitioner in WP.50377/06
M.Bhuvaneswari Petitioner in WP.13/07
A.Shanthi Petitioner in WP.14/07
K.Kemila Petitioner in WP.34/07
P.Arunachalam Petitioner in WP.480/07
M.Vijayaraghavan Petitioner in WP.565/07
T.S.Meena Petitioner in WP.566/07
M.Thenmozhi Petitioner in WP.567/07
N.Kandasamy Petitioner in WP.568/07
R.Agila Petitioner in WP.569/07
S.Gandhi Petitioner in WP.666/07
M.Thamizhmani Petitioner in WP.673/07
P.Ashok Kumar Petitioner in WP.1374/07
P.Nagappan Petitioner in WP.1795/07
V.Umamaheswari Petitioner in WP.1937/07
S.Saraswathi Petitioner in WP.2018/07

1. R.Senthil Kumar
2. M.Ramesh
3. R.Kumaravel
4. K.Devika Petitioner in WP.2416/07

1. D.R.Ganesh
2. B.Suresh
3. M.Somasundaram
4. S.Jothilakshmi
5. K.Pushparaj Petitioner in WP.2584/07

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

K.Sasikala — Petitioner in WP.3063/07
V.Umadevi — Petitioner in WP.3950/07

vs

1. Teacher Recruitment Board,
rep. by its President
4th floor, E.V.K.Sampth Maligai,
DPI Complex, College Road,
Chennai — 1st Respondent in WP.No.50371/06 to 50377/06

2. State of Tamil Nadu
rep. by the Secretary,
School Education, Higher Secondary
Department, Fort St. George,
Chennai-9. — 1st Respondent in WP.No.43897/06

3. Government of Tamil Nadu
rep. by its Secretary,
Department of School Education,
Secretariat, Chennai - 9. — R1 in WP.11442/06, 49742/06, 34/07, 1937/07, 2018/07, 2416/07.

4. Chief Educational Officer,
Erode Educational District,
Erode. — R1 in WP.49983/06
R2 in WP.13 & 14/07
R3 in WP.1374/07, 1937/07.

5. The Director,
Electronic Corporation of Tamil Nadu Limited,
692, Anna Salai, Nandanam,
Chennai - 35. — R1 in WP.50041/06. WP.565 to 569/07 1795/07.
R3 in WP.666/07

6. The Chief Educational Officer,
Kancheepuram,
Kancheepuram District — R1 in WP.50277/06
R6 in WP.666/07

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. Director of Higher Education,
Nungambakkam, College Road,
Chennai 6. R1 in 673/07

8. State of Tamil Nadu
rep. by Secretary to Government,
(Higher Education)
Education Department,
Fort St.George, Chennai -9. R1 in 1374/07

9. Chief Educational Officer,
Cuddalore. R1 in WP.2584/07.

10. Government of Tamil Nadu
rep. by its Secretary,
Education Department,
Secretariat, Chennai - 9. 2nd Respondent in WP.50371/06 to 50377/06
R1 in 30898/05, 47132/06, 49694 to 49697/06, 50033/06, 50276/06, 50318/06, 50368/06, 666/07.

11. Member Secretary,
Teacher Recruitment Board,
Chennai - 6. R2 in WP.43897/06

12. The Chairman Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Building,
DPI Complex, College Road,
Chennai.6 R1 in WP.13 & 14/07, 3063/07, 3950/07
R2 in WP.11442/06, 30898/05, 49983/06, 50277/06, 480/07, 666/7, 1374/07, 1937/07, 2416/07, 2584/07, 34/07.
R4 in WP.50033/06
R3 in WP.2018/07
R5 in WP.50360/06

13. The Director,
Teacher Recruitment Board,
4th Floor, E.V.K. Sampath Maligai,
DPI Compound, College Road,
Chennai - 6. R2 in WP.47132/06
R1 in WP.49926/06.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

14. The Chief Educational Officer,
O/o the Chief Educational Officer,
Nagercoil, K.K. District. .... R2 in WP. 11692/06
R3 in WP.262/07, 50033/2006

15. The Teachers Recruitment Board,
EVK, Sampath Maligai,
College, Road, Chennai-6 . ... R2 in 16/07, 262/07,
50276/06, 50318/06

16. The Chief Educational Officer,
Perambalur District. .... R2 in 49742/06

17. Directorate of School Education,
(Higher Education-II)
No.4 EVK Sampath Building,
College Road, Chennai-6. .... R2 in WP 49926/06

18. The Joint Directorate,
Joint Director for Higher
Secondary Education, Chennai. .... R2 in WP. 50360/06, 673/07

19.The Director of School Education
College, Road, Chennai-6. .... R3 in WP.43897/06, 30898/05
49742/06, 480/07.

R1 in WP 11692/06, 16/07, 262/07,
R2 in WP. 49694 to 49697/06,
50033/06 , 50041/06, 34/07, 565 to
569/07, 1795/07, 2018/07, 3916/04,
3950/07.

20. The Director of High Secondary
Education, Department of School Education,
Chennai-6. .... R3 in WP 11442/06, 47132/06,
2416/07

21. The Chief Educational Officer,
Tirunelveli. .... R3 in WP 16/07, 3950/07

22 The Tamilnadu Teachers
Recruitment Board,
DPI Compound, College Road,
Chennai-6. .... R3 in WP 49694 to 49697/06

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

23. The Chief Educational Officer,
District Chief Educational Office,
Trichy. .... R3 in WP 49926/06

24 The Chief Educational Officer,
Chief Education Office
District Collector Campus,
Salem .... R3 in WP 50041/06
50360/06, 565 to 569/07
673/07, 1795/07,
R1 - 480/07
R4 - 2018/07

25 The Chief Educational Officer
O/o. The Chief Educational Officer,
Thiruvallur District, Thiruvallur. .... R3 in WP 50318/06

26. The Chief Educational Officer,
Saidapet, Chennai-15. .... R3 in WP 34/07
R5 in WP 666/07
R2 in WP 3063/07

27.The Director of Govt Examination
Chennai-6. .... R4 in WP 43897/06

28. Director, Professional Employment
& Executive Office, No. 140, Santhome
High Road, Ground Floor, Tamilnadu
Slum Clearance Board, Kuilthottam,
Chennai-4. .... R4 in WP 30898/05

29. The Chief Educational Officer,
Collectrote, Virudhunagar, ... R4 in WP.11442/06

30. Secretary, Labour & Employment
Department, Secretariat,
Chennai-9. .... R4 in WP 47132/06

31. The Head Master,
TVS Govt Higher Secondary School,
Tirukkarungudi- 627115, TVL. .... R4 in WP 16/07

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

32 The Head Master
The Govt Boys Hr Secondary School,
Marathandam,
Kanyakumari District. .... R4 in WP 262/07

33. The Head Mistress
Govt Higher Secondary School,
Vembadithalam, Salem District. .... R4 in WP 50041/06, 568/07

34. Govt Hr. Secondary School,
Maduravoyal, Chennai-95
Tiruvallur District. .... R4 in WP 50318/06

35. The Headmaster, Govt Boys
Higher Secondary School, Mechari,
Salem. .... R4 in WP 50360/06

36. The Headmistress
M.N.S Govt girls Hr. Sec School,
Attaiyampatti, Salem. .... R4 in WP 565,567 & 569/07, 1795/07.

37. The Head Master,
Govt Hr. Sec School, Pannapatti,
Salem. .... R4 in WP 566/07

38. Elite Software System Pvt Ltd,
Rep by its M.D. D. Mahes Kumar,
64/97. Medavakkam Tank Road, Kilpauk,
Chennai-10. .... R4 in WP 666/07

39. Muthar Basha .... R4 in WP 673/07

40. The Headmaster
Govt Boys Higher Secondary School,
Anthiyur, Bhavani Taluk,
Erode. .... R4 in WP 1374/07

41. The Chief Educational Officer,
Karur District.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

The Headmaster, Govt Hr Sec School,
Esanathur, Karur.

The Headmaster, Govt Higher Secondary
School, Kaniyalampatti, Karur.

The Headmaster,
Govt Higher Secondary School,
Aravakurichi, Karur,

The Headmaster,
Govt Higher Secondary School,
Car street, Karur. .... R4 to R8 in WP 2416/07

42. P. Selvaraj .... R5 in WP 47132/06

43. NIIT Ltd,
Nagercoil Ltd, III Floor,
Ramasunramaniam Complex,
Veppamoodu, Nagercoil .... R5 in WP 16/07

44. The Headmaster,
Govt Higher Secondary School,
Vilavancode, K.K. District. .... R5 in WP 50033/06

45. Higher Secondary School,
Computer Teachers Association,
Rep by its President, No 40,
MGR Nagar, Railway Mettu Street,
Tenkasi-627 811. .... R6 in WP 47132/06

R6 Impleaded as per order
dated 13.3.07 by PJMJ in Suo Moto
Order in WP 50371/07 (Batch Case) and
in MP.1/07.

WEB COPY

Petition under Article 226 of the Constitution of India, to issue a 1] Writ of Mandamus directing the first Respondent to allow the petitioner to apply and take the Special Qualifying examination to be held on 28.1.2007 for the post of Computer Instructor and appoint [in WP.50371/06 to 50377/06]

https://hcservices.ecourts.gov.in/hcservices/

b] directing the respondent No.2 to provide the application form for the examination for Computer Teachers to be held in 28.1.2006 [in WP.11692/06]

c] directing the respondent herein to effect direct recruitment of Junior Post Graduate Assistants in Govt. Higher Secondary Schools in the State of Tamil Nadu to the Subject discipline of computer Science for +2 courses from among the candidate who have been possessing basic degree qualification of B.Sc. Computer Science of M.Sc. Computer Science.

[c] with B.Ed qualification and enroll their names with the 4th respondent and otherwise by causing necessary and appropriate notification in that behalf forthwith for the academic year 2005-2006 and to admit the petitioner to participate in the examination scheduled to be conducted on 25.9.2005 for the post of Jr. Post Graduate Assistants on 25.9.2005 by the 2nd Respondent [WP.30898/05]

[d] directing the respondents 1 to 4 to allow the petitioner to write the Special Examination to be held on 28.1.2007 for Computer Teachers working on Contract basis in Higher Secondary School alongwith the other Computer Teachers.[WP.No.16/07; 262/07]

[e] directing the 1st respondent to permit the petitioner to participate in the Selection Process of the 2nd respondent such as submission of application and attend the interview for regular appointment of the Computer instructor in the Govt. Higher Secondary School by considering the petitioners part service in the each of the petitions.[WP.No.49694 to 49697/06]

[f] directing the 1st respondent to issue an application form to the petitioner the Special Examination for Computer Teacher to be held on 28.1.2007 [WP.No.49983/06, 2584/07];

[g] directing the respondents to consider the petitioner, for appointment as Computer instructor in any one of the Tamil Nadu Secondary Schools in Tamil Nadu [WP.50033/06]

[h] directing the 1st respondent to allow the petitioner to participate in Spl. Text conducted by the 1st respondent herein by considering the representation dated 13.12.2006; [WP.50041/06; 567/07] 26.12.2006, [WP.566/07] 15.12.2006 [WP 565/07] 14.12.2006 [WP.568 & 569/07] 27.12.06 [1795/07] respectively.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

[i] directing the Respondents to issue an Application for the Post of Computer Teacher to the petitioner herein on or before 4.1.2007 the last date fixed by the Respondents.[in WP.No.50276/06]

[j] directing the first Respondent to forward the application of the petitioner to the Second Respondent to sit for Special Examination for Computer Teachers 2006-07 to be held on 28.1.2007 and regularise the services of the petitioner in the post of Computer Teacher with all service benefits [in WP.No.50277/06]

[k] directing the respondent to appoint the petitioner as computer instructor in the newly sanctioned Post of Computer instructor in the 4th respondent School[WP.No.50318/06]

[l] directing the 3rd respondent to issue the petitioner the application for Special Examination for Computer instructor 2006-07 to be conducted by the 5th respondent on 28.1.2007 [WP.No.50360/06]

[m] directing the respondents to appoint the petitioner in each of the petitioners in the post of Computer Teacher in Govt/Corporation /Municipality Schools [WP.No.13 and 14/07]

[n] directing the respondents to permit the petitioner to appear for the Special Test 2006-07 for Computer instructors to be conducted by the Teachers Recruitment Board, Chennai 6.[WP.34/07]

[O] directing the 1st and 3rd Respondent respectively to issue and forward the application of the petitioner to the 2nd and 1st respondent respectively to sit for Special Examination for Computer instructor to be held on 28.1.2007 or any other subsequent dates and regularise the services of the petitioner in the post of Computer Instructor with all service benefits. [WP.480/07 and 3950/07]

[p] directing the 5th and 6th respondents to issue and receive the application forms for the examination to be held on 28.1.2006 by the 2nd respondent to the post of Computer instructor in the Higher Secondary School as per G.O.Ms.No.187, School Education [Higher Secondary] dated 4.10.2006 to the petitioner and consider the case of the petitioner by the 2nd respondent. (WP.666/07)

[q] directing the respondents 2 and 3 to receive the petitioners application dated 15.12.2006 and also consider the representation of the petitioner dated 30.12.2006 [WP.673/07]

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

[r] directing the respondents to consider and include the Diploma in Computer Programming and application also as one of the eligible qualification so as to enable the petitioner to get appointment as Computer instructor by appearing through Special qualifying examination to be conducted by the 3rd respondent for the year 2006-07 and direct the respondents to appoint the petitioner as Computer instructor [WP.2018/07];

[s] directing the 2nd and 3rd respondents to include the petitioners also in the selection process for appointment/regularization of Computer instructors on par with other eligible candidate in accordance with the GO.No.187 [School Education [Higher Secondary] Department dated 4.10.2006 of the 1st respondent.[WP.2416/07]

[t] directing the respondent to issue the application to the petitioner so as to enable the petitioner to writ the Examination on the Selection to the Post of Computer Graduate Teacher in the year 2006-07 to be held on 28.1.2007 conducted by the 1st respondent [WP.3063/07]

[u] Writ of Certiorari calling for the records relating to the impugned prospectus dated nil issued by the 2nd respondent for Special Test for Computer instructor 2006-07 stated to have based on the G.O.Ms.No.188, School Education Department dated 4.10.2006 issued by the 1st respondent herein and quash the same in so far as to relate to the prescribing the Higher Educational qualifications like B.E., B.Sc., M.C.A. B.C.A P.G. Diploma Courses etc. from a recognised University [WP.1937/07]

Certiorarified Mandamus (V) calling for the records of the Ist respondent pertaining to his letter (MS) No.188 dt.4.10.2006 and quash the same and direct the respondent to appoint the petitioner as Computer instructor in Higher Secondary School in her qualifying for the same (WP no. 43897/06)

w) calling for the records of the respondents relating to the impugned proceedings regarding the selection and Special Examination 2006-2007 for the computer Instructor issued by the 2nd Respondent in ref.nil dated nil and quash the same and further direct the respondents to make appointments for the computer teachers in the Higher Secondary Schools as per the procedures prescribed under the Special Rules for TN Higher Secondary Educational Service (WP 11442/06)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(x) calling for the records of the letter dated 04/10/2006 having reference No School Education (Me. Ni. Ka 2) Department letter (Misc) No. 188 issued by the 1st respondent and quash the same and consequently direct the respondents 1 to 4 to terminate the services of the computer instructors appointed by ELCOT in the year 1999 on contract basis in the government schools and recruit B.T and P.G. Assistants in computer science with B.Ed qualification in computer science in the 1880 newly created posts of computer instructors in Government schools by following the recruitment rule and rule of reservation and through the employment exchange on a preferential and permanent basis (WP NO. 47132/06)

(y) calling for the record relating to the impugned order in G.O.No.187 dt.4.10.2006 passed by the Ist respondent and quash the same and direct the Ist respondent to permit the petitioner to appear in the special test for the post Computer Instructors (WP NO. 49742/06)

(z) calling for the records relating to the notification dated 8.12.2006 issued by the 1st respondent and quash the same so far it imposed restriction in Clause I of the said notification prescribing eligibility only to those computer teachers worked upto contract period by receiving the consolidate pay of Rs.2000/- p.m. and continue to work till this date and direct the 3rd respondent to furnish the application forms to the petitioners on or before 4.1.2007 so as to enable them to apply for the examination to regularize their service and to sit for the examination to be held on 28.1.2007 to regularise their service in the post of computer teachers (WP NO. 49926/06).

(za) Calling for the records comprised in the notification for special test to fill the posts of Computer Instructor for 2006-07 as published by the Teachers Recruitment Board/second respondent on 20.11.2006 and to quash the same and consequently direct the respondents to consider the petitioner for the said post (WP NO. 1374/07)

WEB COPY

Mr. C. Selvaraju SC for
M/s. S.Mani and M/s. S. Ramesh .. For Petitioner in WP NO. 50371 to 50377 of 2006 and 2018/07

M/s. Nalini Chidambaram SC for
M/s. Glayds Daniel .. WP NO. 47132/06

https://hcservices.ecourts.gov.in/hcservices/

M/s. Hema Sampath SC for Mr. Subramanian	.. WP NO. 43897/06
Mrs. Vijayalakshmi Natarajan	.. WP NO. 11442/06
Mr. T. Lajapathy Ray	.. WP NO. 11692/06
Mr. R. Natarajan	.. WP NO. 30898/05
Mr. A. Thirumurthy	.. WP NO. 16/07
Mr. Edwin Jayakumar	.. WP NO. 262/07
Mr. S. Packiaraj	.. WP NOs. 49694 to 49697 of 2006
M/s. D. Geetha	.. WP NO. 49742/06
Mr. G. Ethirajalu	.. WP NO. 49926/06
Mr. I.C. Vasudevan	.. WP NO. 49983/06
M/s. Devadasan and Sakar	.. WP NO. 50033/06
Mr. Murudhachalamurthy	.. WP NO. 50041/06
Mr. N. Isabella	.. WP NO. 50276/06
Mr. Hidayatullah Khan	.. WP NO. 50277/06
Mr. K. Raja	.. WP NO. 50318/06
Mr. C.D. Johnson	.. WP NO. 50360/06
Mr. C. Prakasam	.. WP Nos. 13 and 14/2007
Mr. D. Sadhasivam	.. WP NO. 34/2007
Mr. R. Thamaraiselvan	.. WP NO. 480/07
Mr. Marudhachalamurthy	.. WP NO. 565 to 569/07 and 1795/07
Mr. C. Ravichandran	.. WP NO. 666/07

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Mr. Baskara Narayanan .. WP NO. 673/07

Mr. V. Ayyathurai .. WP NO. 1374/07

Mr. K. Premkumar .. WP NO. 1937/07

Mr. R. Saravana Kumar .. WP NO. 2416/07

Mr. T. Rajmohan .. WP NO. 2587/07

Mr. V. Thirupathy .. WP NO. 3063/07

Mr. G. Thalamuthurasu .. WP NO. 3950/07

and Mr. R. Shanmugasundaram SC Mr. Andhiarjuna Senior counsel on behalf of the Govt. Teachers Recruitment Boarding, Director of School Education Mr. R. Muthukumarasamy Senior counsel for M/s. A. Jenasenan, Advocate for the impleaded 6th respondent in WP NO. 47132/06 Mr. M. Sekar S.G.P. And Mr. P. Gopiraja G.A. On behalf of the state of T.N. The court the following order:-

- - - - -

O R D E R

The batch of the writ petitions relate to the Government Order in G.O.Ms.No.187 School Education dated 04.10.2006 under which the Government has created 1880 posts of Computer Instructors in the salary of Rs.5500-175-9000 to be recruited in each of the Government / Corporation Higher Secondary Schools in the State at the rate of one Computer Instructor for each of the school. Consequent to the said Government Order, the Secretary to Government by his letter, dated 04.10.2006 has directed the Director of School Education, Chennai-6 stating that as per the statement of the Hon'ble Education Minister on the floor of the Assembly on 04.08.2006 promising to appoint those Computer Instructors working on temporary basis in the Government Higher Secondary Schools, by way of a selection process on the basis of their qualifications in the 1880 posts of Computer Instructors created by the Government and also stating the method of selection by way of a special test among the temporary Computer Instructors, who are working in various Government and Corporation Higher Secondary Schools under the contract of employment with various organizations like ELCOT, NIIT, etc. In the said letter the Secretary to Government has fixed the following qualifications to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

such candidates, who have been working as Computer Instructions, namely,

1) B.E.Degree in Computer Science / E.C.E., E.E.E. from a recognized University or
2) B.Sc., Computer Science or
3) M.C.A. or
4) B.C.A. or
5) Any Degree from a recognized University in the state with one year P.G. Diploma Course in Computer Application offered by a recognized University.

It also states that in respect of these candidates B.Ed. qualification will not be insisted. It is also stated that the said post of Computer Instructors will be filled up by the Director of School Education based on the list of candidates selected and furnished by the Teachers Recruitment Board, Chennai-6.

2. In W.P.(MD).Nos.43897, 11442, 11692 of 2006 and 30898 of 2005, the petitioners therein apart from having their Degree in Computer Science either in Under Graduate or Post Graduate course have also completed either B.Ed. Degree or M.Ed. Degree in Computer Science as their main subjects. The W.P.No.47132 of 2006 is filed by the Tamil Nadu Computer Science B.Ed. Degree Graduate Teachers Welfare Society with its members, who have completed their Graduation or Post Graduation in Computer Science and B.Ed. Degree also. All these 4 writ petitions challenge the letter of the Secretary to Government dated 04.10.2006 as stated above, on the basis that the decision of the Government in dispensing with B.Ed. qualified candidates while appointing Computer Instructors on regular basis under the general education stream by a selection process but restricting the selection only to the persons, who were appointed temporarily on contract basis from 1999 by various organizations like ELCOT, NIIT, etc. on the basis that it violates Article 14 and 16 of the Constitution of India, apart from stating that it would amount to regularization of illegally appointed persons without qualification and due process of law.

3. On the other hand, the other writ petitions in W.P.(MD). Nos.16, 262 of 2007, W.P.Nos.49694, 49695, 49696, 49697, 49742, 49926, 49983, 50033, 50041, 50276, 50277, 50318, 50360, 50371, 50372, 50373, 50374, 50375, 50376, 50377 of 2006, 13, 14, 34, 480, 565, 566, 567, 568, 569, 666, 673, 1374, 1797, 1937, 2018, 2416, 2584, 3063, 3950 of 2007 are all filed by the petitioners, who have been working as Computer Instructors in various Government Higher Secondary Schools on contract basis through various organizations

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

like ELCOT, NIIT, EVERON, etc., who have not been working on the date of issuance of the above said orders of the Government either due to the availing of medical leave or maternity leave or due to termination etc., and on that basis were not given application for consideration of appointment as Computer Instructors in the Government Higher Secondary Schools in the 1880 posts created by the Government as per G.O.Ms.No.187 dated 04.10.2006 and therefore, they have filed the writ of mandamus for a direction against the respondents to give them application and consider them for appointment in the said posts created by the Government.

4. The facts leading to the filing of the above batch of cases are that the Computer Education was introduced in the XI and XII standards in 1999-2000 as a Phase-I in 666 Government Higher Secondary Schools and it was subsequently extended in Phase-II in 515 Government Higher Secondary Schools in 2000-2001. The Government in furtherance of the above scheme, at that time has entrusted with ELCOT on contract basis to recruit Computer Instructors and the said contractor also by following certain procedures for recruitment through various agents under them have made appointments of Computer Instructors in various Government and Corporation Higher Secondary Schools in the state. The said appointment on contract basis started in 1999 has continued till September 2005. It is also admitted case by the respondents that after the termination of contract period with the said organizations the said Computer Instructors have been continuing by the Government by meeting expenditures to pay salary to them till date.

5. It is relevant to point out that at the time, when the said Computer Instructors were appointed on contract basis, the same was challenged in W.P.No.6564 of 1999 before this Court and this Court while dismissing the said writ petition on 23.04.1999, while appreciating the object of the Government in imparting computer education to the students in 1200 Government Higher Secondary Schools by way of the policy through contract with reputed organization, has observed that the Government being the custodian of social justice will take care of the interest of the qualified persons like the petitioner in the said writ petition, who are like the present petitioners stated in the above said 5 writ petitions, namely, W.P.(MD).Nos. 43897, 11442, 11692 of 2006, W.P.No.30898 of 2005 and W.P.No.47132 of 2006. While dismissing the said writ petition by holding that at that time the Government has not created any permanent posts, therefore, there was no question of making appointment through Employment Exchange has however observed as follows:

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"However, in future, if the Government creates any permanent or sanctioned posts to impart Computer Science in Government Higher Secondary Schools no doubt such posts shall be filled up by recruiting candidates sponsored by Employment Exchange and by following the rules of reservation."

6. According to the petitioners in the above 5 writ petitions, since the Government by G.O.Ms.No.187 dated 04.10.2006 has in fact created 1880 posts of Computer Instructors now to be filled up on regular basis in each of the Government Higher Secondary Schools, it is the duty of the respondents to follow the regular procedure of appointment as per the service rules and also by following the procedure of sponsorship through Employment Exchange and the communal reservation system. The case of the petitioners is that after the contract period has come to an end in September 2005, the respondents ought not have continued those Computer Instructors, who were appointed on temporary basis, since such continuation would amount to otherwise illegal appointment.

7. It is also their case that when once the Government by the G.O.Ms.No.187 has created 1880 posts of Computer Instructors the letter of the Secretary to Government addressed to the Director of School Education dated 04.10.2006 explaining the method of appointment through the Teachers Recruitment Board and imposing the qualifications by dispensing with B.Ed. Degree and restricting the appointment only in respect of those temporarily appointed Computer Instructors would amount to regularizing an illegal appointment of the persons, who are not qualified, especially when the appointment is sought to be made on regular basis, which means under the general stream, in which case for appointment of teachers with B.Ed. Degree is a mandatory requirement, but also such restriction in effect dispensed with the following of sponsorship by Employment Exchange and communal roster system and is also violative of the direction given by this Court in the above said writ petition. That apart it is their case that such letter of the Government takes away the right of the regularly qualified candidates with B.Ed. qualification in Computer Science and in effect it amounts to the arbitrariness, affecting the fundamental right of equality under Articles 14 and 16 (1) of the Constitution of India.

8. It is also their case that the petitioners therein having completed their graduation or post graduation in Computer Science and also completed their B.Ed. Degree in Computer Science as a main

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

subject, are entitled to be considered for appointment as teachers on regular basis in Higher Secondary Schools, especially in the 1880 posts, which was created by G.O.Ms.No.187 dated 04.10.2006. It is against the legitimate expectation of those eligible candidates, who are well qualified, who have registered themselves under the Employment Exchange, the impugned letter of the Secretary to Government dated 04.10.2006 by restricting the appointment to the said vacancies created by the Government only to those temporarily appointed Computer Instructors without educational qualification required as per the Educational Code. This would amount to depriving the qualified persons like petitioners from competing and to be considered for the post of regular Computer Instructors in Government Higher Secondary Schools.

9. However, other than the said 5 writ petitions, in all other writ petitions, which are filed for a direction, which relate to the candidates, who were appointed temporarily as Computer Instructors on contract basis and who were not given applications either for the reason that they were not on the crucial date continuing in the employment as Computer Instructors in Government Higher Secondary Schools or they were terminated before that date, contending that such discrimination among the Computer Instructors appointed on contract basis only on the ground that they were absent due to Medical Leave, Maternity Leave, etc. and non-consideration of their names for appointment out 1880 regular vacancies of Computer Instructors, is violative of Articles 14 and 16(1) of the Constitution of India and therefore, they sought for a direction against the respondents to issue the necessary applications and consider them for appointment.

10. According to them, the very purpose of the G.O.Ms.No.187 and the subsequent letter of the Government dated 04.10.2006 is to enable the Computer Instructors, who have worked for nearly 5 years in various Government Higher Secondary Schools and gathered sufficient experience having been nominated by reputed organizations in Computer Science like ELCOT, NIIT, etc. by following a selection process. By excluding them by flimsy reasons, the very policy of the Government is thwarted and therefore, according to the petitioners in the said writ petitions they have a right to be considered for regular appointment.

11. The respondents have filed counter affidavit. While the facts stated above are not in much dispute, it is their case that G.O.Ms.No.187 dated 04.10.2006 in creating 1880 posts of Computer Instructors on regular basis was based on the announcement made by

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the Hon'ble Minister for School Education on the floor of the Legislative Assembly on 04.08.2006 stating that it was taking into consideration the representations of the temporary Computer Instructors working in various Higher Secondary Schools on contract basis, the Government has decided to appoint them on regular basis based on the selection process and on the basis of the qualifications. Therefore, according to the respondents the decision of the Government in appointing the said Computer Instructors temporarily working under contract basis from 1999 to the newly created 1880 posts in Computer Instructors was a policy decision. It is the specific case of the respondents in the counter affidavit, which states as follows:

> "In the first instance the Government has decided to observe the Computer Instructors working in Government Higher Secondary Schools with prescribed qualifications appointed on contract basis through ELCOT by permitting them to write special test through the Teachers Recruitment Board for their absorption."

12. According to the respondents, it was based on that policy of absorption the qualifications as stated above have been prescribed, namely,

1) B.Ed. Degree in Computer Science / E.C.E., E.E.E. from a recognized University or
2) B.Sc. Computer Science or
3) M.C.A. or
4) B.C.A. or
5) Any Degree from a recognized University in the state with one year Post Graduate Diploma Course in Computer Application offered by a recognized University,

(the requirement of B.Ed., degree is not going to be insisted upon). According to the respondents, the B.Ed., Degree in Computer Science was introduced newly for Computer Science Degree holders only from the year 1999 and therefore, in respect of these recruitment, which according to them is a special drive, the requirement of B.Ed. qualification was dispensed with.

13. According to the respondents, the Government has in fact issued earlier G.O.Ms.No.7 School Education dated 04.01.2000 framing adhoc rules for vocational instructors (Computer Science) in Higher Secondary Schools. In the adhoc rules also B.Ed. Degree has not been prescribed as a qualification. While it is admitted by the respondents in the counter affidavit that the Computer Science is

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

coming under the general stream as an optional subject, it is their case that regular teaching post was not sanctioned by the Government so far and it was only after realizing the necessity of such posts, in the year 2006-2007, the said new posts were created. It is also the case of the respondents that in similar cases wherein temporary employees of similar nature were inducted into Government services like vocational teachers numbering around 1000 were absorbed into Government service in regular time scale of pay, part time employees paid from contingencies, were absorbed into the Government service almost in all departments. Persons appointed under Rule 10(a)(i)(i) of the General Rule as Junior Assistants / Typists were absorbed in the Government service by a special Government Order in G.O.Ms.No.996 dated 25.06.1994 and Noon-mill organizers numbering around 500 were absorbed in Government service as B.T. Assistant through special recruitment tests. Therefore, according to the respondents the impugned procedures are only the special recruitment drive for already existing employees on temporary basis and the Government in future would create separate service rules for Computer Science Instructors as it was done in the case vocational teachers.

14. The respondents have also filed additional counter affidavit stating that the Computer Instructors, who have worked for nearly 7 years through contract and their services having been exploited cannot be left in lurch and the persons like the petitioners in the above 5 writ petitions, who have completed their Computer Science course only recently cannot be treated on par with the said Computer Instructors, who have worked during the needy time and instructed Computer Education to the students. Therefore, this cannot be treated as a complete public employment, since it is only a special recruitment and therefore, the judgement of the Hon'ble Apex court in Umadevi's case cannot be made applicable. It is also the respondent's case that those persons appointed as Computer Instructors and whose appointments have been held valid as per the decisions of this Court have become over aged and they cannot be also neglected and it was in those circumstances, as a matter of policy, a special recruitment drive was made which cannot be questioned.

15. In replying to one other contention raised on behalf of the petitioners that when once computer education is included in the general stream of education, which is expected to be taught by B.Ed. qualified persons which is not insisted upon in the special recruitment drive, the respondents basing reliance upon various

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

reports of the expert's committee would state that when the Higher Secondary Education was introduced in Tamil Nadu in 1978 - 1979 there were two types of courses, namely, general stream and vocational stream in the Higher Secondary education. It was thereafter by an expert's committee in 1984, which recommended that even in respect of the general stream studies one of the four main subjects earmarked can be vocational subjects based on which G.O.Ms.No.1895 dated 07.12.1984 was issued by which the Higher Secondary students in the general stream can choose a vocational subject as any one of the 4 subjects. It was among the said vocational subjects the Computer Science was included. Thereafter, as admitted in the counter affidavit the Computer Instructors post were sanctioned numbering 117 in the year 1996 and subsequently the syllabus were revised and ultimately as per G.O.Ms.No.46 School Education dated 14.05.2004 the Computer Science was introduced as one of the subjects from standard IX with a desire that later it should be extended from VI standard to VIII standard. Therefore, according to the respondents, the Computer education which was all along in the vocational stream was opted as an optional subject as vocational component in the main stream as reflected in the letter of the Director of Government Examination dated 24.03.2005. Therefore, it is admitted that after the said letter dated 24.03.2005 the Computer education was brought under mainstream. It is the case of the respondents that Computer Science being a subject involved in practical application curriculum, the study does not involve any methodology of teaching and therefore, B.Ed. qualification was not required. Therefore, according to the respondents, the petitioners cannot compel the Government to impose a qualification, namely, B.Ed. qualification, which was considered to be not necessary by the Government after a through study of the entire issue by analyzing the report of various expert's committees which has culminated into a matter of policy.

16. It is also the respondents case that G.O.Ms.No.7 dated 04.01.2000 is one such instance of implementation of policy which does not require B.Ed. qualification for the Post of Vocational Instructor on Computer Science and the said Government Order as on date stands and has not been repealed or challenged by any one inasmuch as such vocational instructors are also on the regular scale of pay, who are not in possession of B.Ed. qualification and their appointments continued till date.

17. In respect of the plea of the petitioners about the non following the rules of reservation, it is the case of the respondents that it is not a regular recruitment and there is no

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

element of direct recruitment. In any event according to the respondents the Teachers Recruitment Board has received 1724 applications out of 157 belong to Schedule Castes, 433 belong to Most Backward Classes, 1056 belong to Backward Classes and 71 belong to open categories and 7 applications without any communal particulars. Therefore, according to them, in effect, there is no violation of the principles of reservation. It is also reiterated that prescribing qualification is the policy of the Government especially in the circumstance that G.O.Ms.No.7 dated 04.01.2006 has also prescribed qualification for Vocational Instructors in Computer Science without insisting for B.Ed. and therefore, the prescription of the reasonable qualification by the Government cannot be said to be violative of Article 16(1) of the Constitution of India. It is also the further case of the respondents that even the selection from among the temporary Computer Instructors worked under contract basis is not without any guidelines. The very fact that after the contract period was over in September 2005 those persons, who were continued thereafter by the Government either through the funds of the Government or sponsored through the Parent Teachers Association alone were found to be eligible for absorption and that itself shows the method followed for absorption is not arbitrary.

18. As far as the claim of various petitioners, who filed for mandamus for a direction to consider their names, according to the respondents these are the factual position, which cannot be ascertained in the writ proceedings, since it requires as to whether such candidates are eligible for Medical Leave, Maternity Leave, etc. According to the respondents, as on date there are 2098 Computer Instructors, who have become over aged by having worked on contract basis on a paltry amount of Rs.1500 - 2000 per month as salary and therefore, the present policy of absorption of those candidates without insisting B.Ed. qualification is based on sound principles.

19. In W.P.No.47132 of 2007 filed by the Tamil Nadu Computer Science B.Ed. Graduate Teachers Welfare Society, the Higher Secondary School Computer Teachers Association has got impleaded itself as a 6th respondent. As per the counter affidavit filed by the 6th respondent, in 1999 when the Government decided to impart computer education in the Higher Secondary Schools due to the advancement of technology in hardware and software in the field, the Government has taken a policy decision to impart computer education system by contract through ELCOT, which is a state Government undertaking by appointing them as principle contractor to train and depute Computer Instructors to teach students from standard VI to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

XII in the Government Higher Secondary Schools. Accordingly, the said reputed organization like ELCOT and other subcontractors under ELCOT have issued public notification through advertisement inviting qualified persons to be selected as Computer Instructors in Government Schools. Accordingly, written tests were conducted followed by interview and thereafter selection was made. After selection, those candidates were directed to undergo training and afterwards deputed to function as Computer Instructors in various Government Higher Secondary Schools. Therefore, according to the 6th respondent, it was not as if those Computer Instructors who were appointed on contract basis have been selected on backdoor methods. Their selection was by open method of advertisement and by following a selection process, which is peculiar to the technological development in the said field, which is much advanced even though it is of recent origin, especially in the circumstance that there were no facilities available in the education departments. Therefore, it was only those persons, who were examined by selection process by way of examination, who were appointed and those who failed were terminated. Therefore, according to the 6th respondent, the members of the sixth respondent association, who were appointed as Computer Instructors were fully qualified.

20. The contract of first phase has expired in 2004 and the second phase has expired in 2005. However, the Computer Instructors, who are the members of the 6th respondent association, who worked in the Government Higher Secondary Schools on the consolidated pay of Rs.2000/- per month, in the interest of the continuity of the education among the students they were continued beyond the contract period and in recognition of the service rendered by the members of the 6th respondent association, the letter dated 04.10.2006 was issued for the purpose of making a special recruitment drive, based on which the Teachers Recruitment Board has also issued a notification calling for application from Computer Instructors, presently working in the Government Higher Secondary Schools calling to appear for the special test to be conducted by the Teachers Recruitment Board, notifying that such test would be conducted on 28.01.2007 and it was based on the same, the members of the 6th respondent association have submitted their applications.

21. It is also the case of the 6th respondent that inasmuch as the B.Ed. in Computer Science was introduced only in the year 1999, the requirement of B.Ed. has never been a prescribed qualification for Computer Instructors. When the adhoc rules were framed by G.O.Ms.No.7, B.Ed. was not prescribed as a required qualification. In the few posts created in the year 1996 as Computer Instructors,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

they are working even now without B.Ed. qualification and the said post continues to be in existence. It is the further case of the 6th respondent that prescribing qualification is the wisdom of the Government and considering the peculiar circumstances of the subject and the situation as stated above, the Government is well within its right to give up B.Ed. qualification as a special drive for filling up 1880 posts of Computer Instructors created by the Government. The 6th respondent would also submit that there is no legitimate expectation, since such concept will apply only in cases where the decision of the Government, which disappoints the said expectation, is found to be illegal. On the facts and circumstances of the cases, especially when this Court in W.P.No.6564 of 1999 has upheld the validity of appointment of the temporary Computer Instructors, it can never be said that the original appointment of the members of the 6th respondent association are illegal. It is also denied that the members of the 6th respondent association are not qualified.

22. Mrs.Nalini Chithambaram, learned Senior Counsel appearing for the petitioner in W.P.No.47132 of 2006 filed by the Tamil Nadu Computer Science B.Ed. Graduates Teachers Welfare Society would submit that the appointment of Computer Instructors stated to have been made through the contractor, namely, ELCOT in 1999 is not a regular appointment. According to her, if the Government make regular appointment in Government Higher Secondary Schools, it must be in conformity to the regulations, governing appointment of teachers, which require B.Ed. Degree as a necessary qualification. She would also submit that when admittedly, the contract has come to an end even in September 2005 any amount paid from the Government fund thereafter to such Computer Instructors on contract basis whose term has come to an end can only be an unauthorized one and the present impugned letter which in effect seeks to regularize their services can only amount to the regularization of illegal entrants, otherwise than in accordance with the due process of law.

23. She would also rely upon the Judgement of this Court reported in 1995 WL 499 to substantiate her contention that such process of recruitment can only be illegal. She would reiterate that when earlier the Writ petition was filed, this Court in W.P.No.6564 of 1999 dated 23.04.1999 has clearly stated that at that time when the appointments made on contract basis, even though it was held valid, it was due to the reason that the Government at that time has neither created any permanent posts nor sanctioned posts to impart computer education in 1200 Government Higher Secondary Schools and in those circumstances making it clear that in future if the Government creates any permanent or sanctioned posts the same

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

shall be filled up by recruiting candidates sponsored by employment exchange and following rules of reservation. Now that under G.O.Ms.No.187, dated 04.10.2006, the Government has created 1880 posts, it is incumbent on the part of the respondents to follow the due process of law for appointment by following the various legal requirements as stated above.

24. She would submit that by virtue of creating the said posts for the purpose of Computer Education in the Government Higher Secondary School, it should no longer be taken that the Computer Instruction is a vocational instruction and it should be treated as an instruction imparted on the main stream and in fact that was the basis on which the earlier order was passed by this Court. She would also refer to the contents of the G.O.Ms.No.187 wherein it is clearly stated that what was created was a new service and approval of legislature would be obtained in course of time and in anticipation of the same, the advance payment will be made from unexpected expenditure fund of the Government. She would submit that in respect of the other appointments in the Government Higher Secondary Schools as teachers, B.Ed. is a necessary qualification and there is no reason in dispensing with B.Ed. qualification for the purpose of appointment of Computer Instructors on the main stream and the same will be against the norms of the Government which is followed in respect of all other subjects, especially in the circumstance that when B.Ed. Degree is granted in Computer Science and many candidates in the open market are remaining unemployed.

25. She would also submit that the very minutes of the school education department dated 10.10.2006 saying that even after the contract period was over, the Government took over payment of their salary itself, can only be termed as misuse of powers. She would place reliance on the constitutional bench judgement of the Hon'ble Supreme Court rendered in Uma Devi's case reported in 2006(4) SCC 1 that merely because the temporary employees on casual basis have continued for a long time and beyond the term of appointment that will not entitle such candidates to be absorbed in regular service merely on the strength of such continuance. She would also rely upon the judgement of the Hon'ble Supreme Court reported in 2006(7) SCC 161 to state that this being a public employment, it is incumbent on the part of the respondents to follow the regular procedure for appointment and the conduct of the respondents is only amounting to regularizing persons who are illegally appointed.

26. Mrs.Hemasampath learned Senior Counsel appearing for the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

petitioner in W.P.No.43897 and 48762 of 2006 in addition to the submissions made by Mrs.Nalini Chithambaram, would submit that earlier when the appointment of Computer Instructors were made, it was not only made purely on temporary basis but also it was under the vocational stream. She would also bring to the notice of this Court the contents of the counter affidavit filed by the respondents in the earlier Writ petition in W.P.No.6564 of 1999 and ultimately took this Court to the decision reported in 1999(2) CTC 127 to substantiate her contention that now as per the direction given earlier, the Government having created 1880 posts of Computer Instructors, it is the duty of the respondents to follow the regular process of selection sponsored by the Employment Exchange, apart from following the communal roster system. She would also state that earlier when the Writ petition was filed, this Court has dismissed the Writ petition holding that the steps taken by the Government in appointing Computer Instructors on temporary basis is perfectly valid on the basis that there was no post of Computer Instructors created and now that the post has been created, she would submit that the decision of the Government in making the appointment in respect of 1880 created posts cannot be restricted only to the persons who have been employed as Computer Instructors on contract basis whose term has come to an end and the same cannot be the policy decision. She would rely upon the judgement of the Hon'ble Supreme Court reported in 1998(4) SCC 117 and also JT 2002 (5) SC 591 to say that if such policy decision is arbitrary and in violation of Article 14 and 16 of the Constitution of India, this Court can interfere under Article 226 of the Constitution of India.

27. According to the learned Senior Counsel, by allotting the entire 1880 posts of Computer Instructors created by the Government only to those unqualified persons who have worked on contract basis for nearly 5 years merely on the basis that they have worked for a long period on temporary basis is only arbitrary and the same can never be termed as a reasonable classification, by relying upon the judgement of the Hon'ble Supreme Court reported in AIR 1974 SC 1631. She would also refer to the Tamil Nadu Higher Secondary Education Rules wherein in respect of the appointment of Secondary Grade teachers as per the said rules apart from the academic qualifications, required either B.T. or B.Ed. as a necessary requirement and as long as such qualification as prescribed in the statutory rules for appointment of teachers in the Higher Secondary schools are in existence, it is not open to the respondents to give up such qualification merely on the basis that the contract employees have worked for a longer period.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

28. In addition, Mrs.Vijayakumari Natarajan, learned counsel appearing for the Writ petition in W.P.(MD).No.11442 of 2006 would refer to G.O.Ms.No.720 Education dated 28.04.1981, wherein the rules prescribed for reservation and also the age limit.

29. The learned counsel appearing for the petitioners in all other cases would submit that employees who have worked on contract basis as Computer Instructors in various Government Higher Secondary Schools during the contract period and who have availed leave due to various reasons either on medical ground or maternity ground, etc. and who have not been working on the date of impugned letter and on that ground were not given the application form for consideration for appoint of Computer Instructors in the 1880 posts created by the Government under G.O.Ms.No.187. They submitted that inasmuch as those Computer Instructors were appointed at the crucial time when the sufficient number of qualified candidates with B.Ed. Degree were not available, since B.Ed. in Computer Science itself was introduced only in the year 1999, it cannot be said that at the time when they were appointed on contract basis, such appointment should be termed as either illegal or irregular. In any event their contention is that having been appointed as Computer Instructors and extracted work on the paltry amount of consolidated pay on monthly basis, merely because technically they were not working for a few days by availing medical leave etc., they cannot be denied the right as given to the other contract employees, who have been appointed and who are similarly situated as that of these petitioners and such conduct in denying the petitioners right to be considered for appointment in the regular posts is only arbitrary and discriminatory in character affecting Article 14 and 16 of the Constitution of India.

30. It is their contention that when their appointment was through the reputed organization like ELCOT, NIIT, etc., the restriction of appointment only to the candidates who are actually in service on the date of the impugned letter is violative of the principles of equality. It is also their contention that they have been working with continuity of service imparting Computer Instruction to the students in the Higher Secondary School level at the time when such instruction was of a dire need and this Court has held at that time that such appointment of the petitioners and similarly situated Computer Instructors was well within the powers of the Government. In such circumstances, the conduct of the respondents in not considering the petitioners who have also been a Computer Instructors appointed on contract basis is illegal.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

31. The learned counsels also would submit that it is not as if all these candidates were without qualifications. Many of them were qualified either Graduates in Computer application with B.C.A. or Master Degree in Computer application with M.C.A. and are not having B.Ed. Degree. In some of those cases like in W.P.No.49983 of 2006 etc. the lady candidates who have been well qualified and appointed through ELCOT and NIIC and other reputed organizations have been denied applications simply because they have necessarily availed maternity leave during the concerned period and therefore, taking into consideration that such petitioners have not been working during the relevant period their legitimate right is affected by the conduct of the respondents. It is also their contention that when once the avowed object of the Government is to absorb the temporarily appointed Computer Instructors on the regular main stream, it is not open to them to make discrimination among the class of people and such act will amount to unreasonable classification.

32. In one such case Mr.Sathasivam, learned counsel appearing for the petitioner in W.P.No.34 of 2007 has brought to the notice of this Court that the petitioner has completed B.Sc. Computer Science and subsequently qualified himself with M.C.A. degree with first class in April 2004 with Typewriting first class qualification and with that high qualification he was appointed by SRM Radiant as Computer Instructors for a paltry amount of Rs.2000 per month from 19.11.2002 and he has been working in the said capacity and when he went on leave on loss of pay from 01.11.2005 to 31.08.2006 and afterwards rejoined and continued in the post, he is not given application for the purpose of consideration for appointment of the regular Computer Instructor in the newly created 1880 posts of Computer Instructors.

33. Mr.C.Selvaraj learned Senior Counsel appearing in some of the writ petitions like that of the one stated above would submit that when once earlier the contract employees appointed through ELCOT and their appointment was questioned and the said appointment were upheld, it is only natural that all those persons should be regularized in a proper manner. He would also submit that having worked for many years and that they having been crossed the required age limit, their plight has also to be considered. He would also submit that among the persons who were appointed through ELCOT there cannot be any differential treatment and he would also submit, in fairness that the 1880 posts must be given to all persons appointed as Computer Instructors on contract basis through ELCOT and other organizations.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

34. According to him, there is no necessity for following the rules of reservation and other methods of regular recruitment, since as it is stated in G.O.Ms.No.187 the creation of 1880 posts is only a temporary measure. He would also submit that the reference to the said Government Order shows that the fund to be met for the purpose of appointment of these 1880 Computer Instructors are to be met from the contingent fund and from the recurring fund of the Government which is required for permanent appointments. He would also further submit that in such cases wherein the appointment made by ELCOT and other organizations should be treated as legal when the same was held valid by this Court and that order has become final and in such circumstances by providing a further qualification, among the Computer Instructors temporarily appointed can only be a discrimination.

35. On the other hand Mr.Andhiarjuna learned Senior Counsel appearing for the respondents, namely, the Government and the Teachers Recruitment Board including the Director of School Education would submit that when the Higher Secondary education was introduced in the year 1978-1979 based on the concept of 10+2+3 education on the basis of Kothari Commission's report, there were 2 streams of education, namely, general stream and vocational stream and the Computer Science has been treated as a vocational stream from 1978. According to him, it was made as a vocational component under general stream in the year 1984 - 1985 for XI and XII standards. He would submit that in the year 2004 by virtue of a Government Order, a revised curriculum was introduced for standards of XI and XII and Computer Science was made as optional subject by regrouping the various subjects in the Computer Code. Even at that time Computer Science remained as vocational stream. He would state that the Computer Science is not like any other academic subjects. It does not involve the study of methodology of teaching and therefore, the question of insisting B.Ed. qualification does not arise.

36. He would also submit that whether B.Ed. qualification should be insisted or not, is for the Government to decide as a matter of policy depending upon the facts and circumstances of the case. He would also bring to the notice of this Court that it was based on that when the Government passed G.O.Ms.No.7 dated 04.01.2000 by framing rules under Article 309 of the Constitution of India for appointment of Computer Teachers and even at that time B.Ed. qualification in Computer Science was not required. According to the learned Senior Counsel the said G.O.Ms.No.7 dated 04.01.2000,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

which has created a statutory rule framed under Article 309 still is in existence and it has not been superceded.

37. He would also insist by placing reliance on the judgement of Hon'ble Supreme Court reported in 2006(3) SCC 541 and 2002(6) SCC 252 that imposing of qualification is for the Government based on the policy and not for the petitioners. He would also submit that at the time when the Computer Education was introduced in the Higher Secondary Courses in 1999-2000, there was no infrastructure or any other facilities or instructors and it was in those circumstances, the eminent people on the field like ELCOT and NIIT were approached to give the Computer hardware and software and also to supply the computers on payment.

38. He would submit that when this Court in the Judgement dated 23.04.1999 rendered in W.P.No.6564 of 1999 has upheld the validity of such appointment, it is not open to the petitioner who are now challenging the process of selection, to go back from the judgement to say as if the appointment made earlier in 1999 of the Computer Instructors is illegal. He would submit that the said order which has become final was rendered conscious of the fact that B.Ed. qualification was not insisted for the Computer Instructors at the time of appointment and therefore, it can never be said that the original appointment of the Computer Instructors were illegal. On the face of the circumstance that when the G.O.Ms.No.7 which created a statutory rule under Article 309 of the Constitution of India and in the light of the order of this Court stated above, it should be treated that the appointment of those Computer Instructors on temporary basis in the year 1999 was made on legal basis. When these contract came to an end in September 2005, it was only to avoid interruption in teaching of computer instruction, the Government had to pay the fund from Parent Teachers' Association and it is based on the public policy and it is not open to the petitioners to question the same. In any event, according to the submissions of the learned Senior Counsel this can never be treated as siphoning of the fund for an improper purpose.

39. The learned Senior Counsel would also submit that in the circumstance that these Computer Instructors who have worked for many years continuously even though on temporary basis, have made representations on various grounds that they are fully qualified and they are over aged due to the service rendered by them in the Higher Secondary Schools and therefore, they should be considered for the purpose of making regular appointment especially in the circumstance that they have been paid only the paltry amount of Rs.2000 per month

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

as a consolidated pay of salary, having got high qualification like M.C.A., B.Sc., Computer Science, etc. It was only considering all those aspects, on equitable ground the Government, based on the assurance given by the Hon'ble Minister on the floor of the Assembly has issued G.O.Ms.No.187 by creating 1880 posts of Computer Instructors and it is thereafter by the communication of the Government dated 04.10.2006 the method of appointment and qualification were imposed. According to the learned Senior Counsel, the impugned communication dated 04.10.2006 cannot be stated to be illegal for the reason that it is in accordance with the statutory rule earlier framed under Article 309 of the Constitution of India, which continues to be in existence wherein B.Ed. qualification has never been insisted as a necessary requirement and therefore, according to the learned Senior Counsel it is not as if the present impugned order is passed against the statutory rules.

40. He would also submit that at the time when these Computer Instructors were appointed in 1999 on contract basis it was not as if they were appointed whimsically, but it was based on the publication given in the newspapers and calling for application and by process of selection by the qualified authorities on the subject, namely, ELCOT, NIIT, etc., and therefore they have undergone the selection process and it is not even the case of the petitioners that by their guidance as Computer Instructor in these years the students have not acquired the necessary knowledge on the computer education, especially in the circumstance that their appointment has held valid by this Court which has become final.

41. He would submit that the judgement of the Hon'ble Supreme Court in Umadevi's case reported in 2006(4) SCC 1 do not apply to the facts and circumstances of the case for the simple reason that the appointment of these Computer Instructors were not in violation of any principles and their appointment is not behind the back of any one and they were well qualified in the subjects. He would also submit that even otherwise such appointments were not in fact made by the Government. He would further submit that the present impugned process is not regularization or absorption, it is only a matter of preference being given to these contract employees as it was approved by the Hon'ble Supreme Court in the judgement reported in 2001 SCC 1 and in 2002(4) SCC 609 wherein on abolition of contract labour system giving preference to such contract labours in the future appointment is not opposed to law.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

42. He would submit that the preference is given for the appointment of 1880 posts Computer Instructors in a special drive intended only for the purpose of giving preference to those who have served for so many years on contract basis and the said preference is with lot of reasons, namely, that they have served for 7 years, they have secured excellent results ranging from 90 - 100 percent success, they have served in all other areas including village and urban areas, that by long service they have lost their eligibility due to the advancement of their age and cancellation of their registration under the Employment Exchange, that for the excellent service rendered they were paid only paltry amount of Rs.2000/- per month, that they have created familiarity with the students of XI and XII standards and that these Instructors have been fully trained in accordance with the new syllabus.

43. According to the learned Senior Counsel, the petitioners who have now challenged the present procedure of appointment on the basis that only B.Ed. qualified candidates should be given appointment cannot be compared with these Instructors who have worked for 7 years and gained excellent experience apart from producing results in a remarkable manner. Therefore, the question of applicability of Article 14 and 16(1) of the Constitution of India does not arise. According to the learned Senior Counsel, there is a rational nexus between the object sought to be achieved and the present conduct of the Government in giving preference to these Computer Instructors who have rendered service for 7 years. He would also submit that it is the Government which has got right to employ according to the factual situation as it deemed fit, as it is rendered by the Hon'ble Supreme Court in 1984(4) SCC 251.

44. According to the learned Senior Counsel, the present drive is not a open recruitment but it is a special recruitment of former Computer Instructors who are already in service of the Government Higher Secondary Schools. Therefore, the question of applicability of policy of reservation does not arise. According to the learned Senior Counsel, he would submit finally that it is an one time measure by the Government as a matter of policy which cannot be questioned.

45. Mr.R.Muthukumarasamy, learned Senior Counsel appearing for the 6th respondent, namely, the Higher Secondary School Computer Teachers Association impleaded as a party in W.P.No.47132 of 2006 representing the Computer Instructors appointed in the year 1999 - 2000 on temporary basis through ELCOT, NIIT and other organizations,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

while adopting the argument of Mr.Andhiarjuna learned Senior Counsel appearing for the Government, would submit in addition that in 1999 - 2000 when they were appointed those Computer Instructors have followed the process of appointment by taking tests conducted by the Director of School Education in the year 2000 and it was only those candidates who have passed in the said examination were continued as Computer Instructors. Therefore, a selection process has been undergone by the members of the 6th respondent association and they have rendered continuous service of 7 to 8 years respectively. What is now stated in the letter of the Government dated 04.10.2006 is only a special recruitment drive by following the procedure of selection, namely, conducting the test after giving advertisement among the persons who have worked from 1999 to 2005 continuously for the purpose of recruiting them on regular basis in 1880 posts created under G.O.Ms.No.187 dated 04.10.2006.

46. He would also submit that the cases referred to by the petitioners by referring to Umadevi's judgement are relating to the regularization of temporary, casual and contract employees merely on the basis that they have rendered long years of service but in the present case it is a recruitment drive through the test to be conducted by the Teachers Recruitment Board and therefore, according to the learned Senior Counsel on the facts and circumstances of the present case Umadevi's judgement will not have any application. He would also submit that the appointment of the Computer Instructors made in 1999 - 2000 was based on the adhoc rules framed as per G.O.Ms.No.7 under Article 309 of the Constitution of India and the qualification prescribed were B.E. in Computer Science or M.C.A. or B.C.A. etc. therefore, such prescription of qualification cannot be said to be irrational. While dealing with the contention that the present recruitment cannot be restricted only to the Computer Instructors appointed on temporary basis in 1999-2000 since it is violative of Article 14 and 16(1) of the Constitution of India, the learned Senior Counsel would submit that these Computer Instructors by their service have acquired experience of nearly 7 to 8 years and therefore, they have formed a class by themselves and the Government is entitled to give preference to those persons who have been employed on contract basis after termination of their services on contract employment. Therefore according to the learned Senior Counsel, the special test conducted among these persons is to select the best among these persons and the selection process cannot be said to be arbitrary.

47. He would also submit that even assuming that this recruitment drive for 1880 posts were made open to all, it would

https://hcservices.ecourts.gov.in/hcservices/

have been perfectly in order for the Government to provide additional weightage and marks to the experience gained by these candidates, in which circumstances it can never be treated as arbitrary therefore, according to him it is the policy of the Government only as one time measure which cannot be found fault with. He would also submit that when once the Government has passed an order in creating 1880 posts, the subsequent letter of the Government dated 04.10.2006 cannot be said to be an extraneous conduct of the Government. He would also submit that simply because the executive action has not been properly followed as per Article 166(1) of the Constitution of India by getting the consent of the Governor, it does not mean that it ceased to have the effect of the state Government's conduct. In the present case, he would submit that the respondents Government have filed affidavit stating that the communication on 04.10.2006 is the act of the Government and therefore, by applying the ratio laid down by the Hon'ble Supreme Court reported in AIR 1963 SC 1323, the impugned order should be treated as an act of the Government. According to him, it is nobody's case that the impugned order is not the act of the Government. There is no question of the executive instruction superceding the statutory rules, especially in the circumstance that the Computer Instructors appointed in 1999 - 2000 have formed a class by themselves and dispensing with qualification of B.Ed. has been done, even under G.O.Ms.No.7 as early as 2000 which continues even as on today.

48. He would also submit that what is created in G.O.Ms.No.187 is only that of the Computer Instructors and not Computer Teachers. Inasmuch as the creation of Computer Instructors in G.O.Ms.No.187 has not been questioned by any one, it is not open to the petitioners to interpret as if it is the post of Computer Teachers and therefore, B.Ed is a required qualification.

49. I have heard the learned Senior counsels for the petitioners Mrs.Nalini Chithambaram, Mrs.Hema Sampath and other learned Senior Counsels and Mr.Andhiarjuna learned Senior Counsel appearing for the Government apart from Mr.R.Muthukumarasamy learned Senior Counsel appearing for the 6th respondent impleaded in W.P.No.47132 of 2006 and other learned counsels and perused the entire records.

50. The indisputable facts which are to be considered in this case while tracing the history of the Higher Secondary Education as pointed out by the learned Senior Counsel appearing for the Government is that in the Higher Secondary stage, the Government has

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

introduced vocational courses in the year 1978 - 1979 numbering 1153 with the following major vocational groups, namely, Agriculture, Home Science, Commerce and Science, Engineering Technology, Health and Miscellaneous. That was the time when the 10+2 pattern of education was introduced in the state. In respect of the faculties to impart instructions in the said vocational courses, as it is seen in G.O.Ms.No.1719, Education Department, dated 14.09.1978 the Government has accepted the recommendations of the Director of School Education to permit the Headmasters of the schools to nominate staff to be utilized on part time basis from State Seed Forms Rural Extension Training Center Research Station of Tamil Nadu Agricultural University, Agro Industries Corporation, Agro Engineering and Service Corporation Federation Ltd., etc., Public Works Department TANSI etc., Recognized Commercial Institutions of Auditors, etc., apart from hospital staff, Staff of Institutions under Medical colleges and also directed that those qualified part time instructors for vocational Higher Secondary courses are to receive remuneration as allowed by the Government.

51. It was with that direction the Government has created the posts of part time vocational instructors at the rate 2 for each vocational courses. The relevant portions of the said Government Order reads as follows:

> "7. The Government therefore sanction the creation of posts of part time Vocational Instructors at the rate of 2 for each Vocational Courses, except the Higher Secondary Schools which have already employed the Bifurcated Course staff. These part time posts will carry each a consolidated remuneration of Rs.150/-p.m. tenable for 10 months every year (i.e. excluding the period of vocation). "

52. By a subsequent G.O. in G.O.Ms.No.1895 Education dated 07.12.1984 while considering about the various subjects in the general stream of candidates, who were expected to take 4 optional subjects, the Government has permitted to allow the Higher Secondary students of general stream to offer a vocational subject as one among the 4 optionals. The relevant portion of the said Government Order which reads as follows:

> "2. The Government direct that with effect from 1984-1985, such of the Higher Secondary Schools as opt to do so, may be permitted to allow their Higher Secondary students of the general stream to offer a vocational

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

subject in lieu of one of the four optionals. Specific permission of the Director of School Education shall be obtained by each school. Some of the Higher Secondary Schools have already been permitted by the Director of School Education to introduce Computer Science as such as vocational subject and his action in this regard is ratified. The details of implementation of this scheme during 1984-1985 may be reported to the Government by the Director of School Education by January 1985."

53. Therefore, by the process of evolution the vocational courses which were optional, were brought within the general stream however, giving option to the general stream candidates to choose one of these vocational subjects. It was based on the said Government Order, the Director of School Education by his letter dated, 20.08.1985 has stated that based on the Chief Minister's scheme of life oriented education in school system, the vocational component under general stream in +2 stage was introduced with Computer Science in the XI standard in respect of one of the schools. In that communication it is stated that a new group comprising 4 optional subjects, namely,

1) Mathematics
2) Physics
3) Chemistry and
4) Computer Science

should be included. It is also stated in the said communication that a part-time teacher on monthly remuneration not exceeding Rs.300/- tenable for 12 months in a year may be employed for teaching Computer Science. Therefore, while the general stream contemplated academic study, the vocational stream contemplated practical orientation. By the above said evolution, there is a fusion of vocational component in the general stream as per G.O.Ms.No.1895 dated 07.12.1984.

54. The high level committee on vocational education constituted by the Government in 1993-1994 in its report has stated by confirming that the Computer Science among various other subjects like Electronics, Office Management, Electrical Domestic Appliances, Electrical Motor Rewinding, General Machinist, Banking Assistance, Radio and Television Maintenance and Repair, General Insurance, Pre-school Teacher, Composing and Printing Technology as one of the vocational component subjects introduced under the general stream. A reference to the report shows the following factual position, namely,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"From 1984-85 such of the higher secondary schools as opt to do so were permitted to allow +2 students of the general stream to offer vocational subject in lieu of one of the four optionals. The number of schools implementing the scheme in 1986 was 120."

55. Therefore, in addition to the vocational stream in existence, the vocational components subjects have been introduced in the general stream from the 1984 - 1985, which cannot be disputed.

56. While prescribing qualification for the post of part time vocational instructors in Computer Science as vocational component subject under general stream, the Government in G.O.Ms.No.588 Education Science and Technology (VE) Department dated 21.07.1995 has imposed the following qualifications:

"The Government after careful examination of the proposal of the Director of School Education, prescribe the following as qualifications for the post of part time Vocational Instructors (Computer Science) in Higher Secondary Schools with effect from 23.09.1994:-

a) B.E.Degree in Computer Science and Engineering / Electronics and Communication / Electrical and Electronics Engineering.

OR

b) B.Sc., Computer Science with B.Ed, Degree or one year Post Graduate Diploma Course in Computer Application offered by recognized Universities or equivalent.

OR

c) Any Degree with

i) One year Post Graduate Diploma Course in Computer Application offered by recognized Universities or equivalent.

OR

ii) Diploma Course in System Analysis and Data processing offered by Annamalai University or equivalent

OR

iii) Certificate on 'O' Level examination conducted by Department of Electronics or equivalent.

OR

iv) Certificate Course in Computer Programming conducted by recognized Colleged and Universities for a period not less than six months or equivalent and experience of Teaching programme for atleast on year."

It is true that in the said Government Order, there was no

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

requirement of B.T. or B.Ed. for the part time vocational instructor in Computer Science. It is significant to note that by a subsequent Government Order in G.O.Ms.No.790 Education Science and Technology (VE) Department dated 06.11.1996, in respect of the introduction of Computer Science and vocational component subjects in the general stream at +2 level, a proposal was sent based on the fact that by G.O.Ms.No.588 dated 21.07.1995 qualifications have been prescribed for the post of part time vocational instructors in Computer Science and that there were 117 Computer Science part time teachers in the state remaining fully qualified, while the others are unqualified and in spite of that the qualified candidates were not brought under the time scale of pay in spite of the fact that they have become seniors. The Government has created 88 additional posts of vocational instructors on full time basis, apart from absorbing the fully qualified part time vocational teachers in Computer Science on the regular scale of pay. The operative portion of the said Government Order, which runs as follows:

> "4. The Government after examining the matter based on the reports of the Director of School Education issue the following orders:-
> (i) the fully qualified part time Vocational Teachers (Computer Science) who happen to be seniors to the Junior most fully qualified part time Vocational Instructors who have already been brought into the regular time scale of pay in the G.O.second read above shall be absorbed in the regular time scale of pay i.e.Rs.1400-40-1600-50-2300-60-2600, with effect from the date of issue of this Government Order.
> (ii) The fully qualified part time Vocational Instructors (Computer Science) who happen to be seniors to the junior most remaining qualified and / or subsequently qualified Vocational Instructors referred to at para (v) of the Government Order second read above, as per the norms prescribed in the said G.O., shall be brought in to the Secondary Grade scale of pay for the time being and in due course appointed as Vocational Instructors in the B.T. scale of pay as and when posts become available under the Centrally Sponsored Scheme of Vocational Education.
> (iii) As a result of the orders in para (i) and (ii) above, Government sanction the creation of 88 (Eighty Eight) additional posts of Vocational Instructors for a period up to 30.06.1997 in the scale of pay of Rs.1400-40-1600-50-2300-60-2600 with the usual allowances from the date of issue of this order and 29(twenty nine) posts of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Vocational Instructors for a period upto 30.06.1997 in the scale of pay of Rs.1200-30-1600-40-2300 with the usual allowance from the date of issue of this order."

57. Therefore, the part time vocational instructors in Computer Science have been made as full time vocational instructors in Computer Science in the Higher Secondary Schools, in respect of 117 posts which have been regularized as per the said Government Order dated 06.11.1996. It is not in dispute that these 117 full time vocational instructors posts is still in existence who are having the qualification as prescribed in G.O.Ms.No.588 dated 21.07.1995. In the status report about the vocationalization of education prepared by the Director of School Education in September 1997 also, it is confirmed that the Computer Science included as a vocational component subject under general stream in the part III optional subjects which included various subjects like Computer Science, Office Management, Electronics, Electric Domestic Appliances, Electrical Motor Rewinding, General Machinist, Banking Assistant, Radio and Television maintenance and repair, General Insurance, Pre School Teacher, Composing and Printing Technology.

58. It is also not in dispute that the Government had introduced to inculcate Computer education in 50 Government schools by entrusting the work to ELCOT, as it is seen in the letter of the Secretary to Government dated 28.07.1998 wherein, a proposal was given to follow certain principles, while entrusting the said work to ELCOT to implement the scheme. The guidelines included that
1) Computer institutions should have minimum 3 years of experience in Computer teaching
2) They should have trained at least 1000 students in the course ranging to one year and more
3) They should have got the branches of the institution throughout the state and
4) They should have minimum hundred instructors in their control.
The further guidelines was that to instruct +1 and +2 students, each schools can have one full time Computer Instructor, he should also instruct the X class students, the said organization shall be responsible for maintaining the Computer Science, that the software consumables will be given by the Government, that such agency can conduct computer classes 3 to 4 hours after the school hours and that such agencies can prescribe the syllabus and also receive the necessary fees, however, to pay a portion of the fees to the Government. The policy note enunciated by the Government in this regard states as follows:

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"10. The policy of the Government is to ensure that all the students passing out of the schools will be computer literate and adequately prepared for the emerging era of Information Technology. In order to achieve this goal in a period of 5 years, it has been proposed to introduce Computer Science as an elective subject in all the Government Higher Secondary Schools. Suitable, experienced training institutions will be engaged to install and maintain computers and render training according to the syllabus run by the Government."

59. It was consequent to the said policy decision the Electronics Corporation of Tamil Nadu Ltd., (ELCOT) which is a Government of Tamil Nadu undertaking was appointed as a procurement agency for the purpose of procuring I.T. hardware and software, the contract was entered by the Education Department with the agencies in 1999 and the same was for a period of five academic years commencing from the date of the signing of the contract in 1999.

60. Therefore, it is clear that by this policy, the Government has entrusted the computer literary programme to be imparted in the Higher Secondary School level to ELCOT on contract basis for 5 years in addition to the 117 full time vocational Computer Instructors who have been appointed on regular basis on time scale and whose services are not discontinued and the posts still remain as on date. Therefore, it is clear that by the contract entered by the Government based on the policy in the year 1999 - 2000, it is not for the purpose of creating contract employees and it can at the most be taken as a package as rightly submitted by the learned Senior Counsel appearing for the Government, since at that time the Government had no infrastructures in respect of imparting Computer Instructions on literary basis to the Higher Secondary students and there were certainly dearth of candidates qualified to teach with B.Ed. qualification, since as stated by the Government the B.Ed. in Computer Science was introduced only in the year 1999 and therefore, the avowed object of the said policy was to see that in the Computer scenario the state of Tamil Nadu stands not inferior to any other states in the country. In fact it was considering the said avowed object only this Court while dismissing W.P.No.6564 of 1999 filed against introducing the said contract service system in 1999-2000 by the present writ petitioners who are possessing B.Ed. Qualification, has held that such appointment on contract basis is not invalid in law.

61. In fact when it was vehemently argued before this Court by referring to the Division Bench judgement rendered in the State of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Tamil Nadu rep.by its Commissioner and Secretary to Government Education Department, Fort St.George, Madras-9 and 93 others Vs. Tamil Nadu Recognized Private Schools Managers Association Rep.by its Joint Secretary Pulavar R.Palanisamy and others reported in 1995 WLR 499 which was in relation to the provisions of the Tamil Nadu Recognized Private Schools Regulation Act along with the Employment Exchange (compulsory notification of vacancy) rule 1960 holding that insisting of appointment of candidates sponsored only through employment exchange by a Government Order is well founded, this Court has held that the said judgement has no application to the facts and circumstances of the case.

62. It is true that due to various reasons including that the Division Bench judgement was relating to the appointment in private schools governed by the said Act, apart from many other factors, but the contract appointment which was questioned was relating to the imparting of instructions in the Government Higher Secondary Schools and therefore, this court has held that there was no question of following the same, since there was no creation of post at that time. The relevant passage of the judgement rendered by Justice P.D.Dinakaran in E.Chandravathanam and 4 others Vs. State of Tamil Nadu Rep.by its Secretary, Education Department, Fort St.George, Chennai-9 and 2 others in W.P.No.6564 of 1999 dated 23.04.1999 reported in 1999(2) CTC 127 in the following words of assertion:

> "24. Even though the petitioners heavily rely on the decision in State of Tamil Nadu and others Vs. The Tamil Nadu Private Schools Managers Association and others, 1995 WLR 499, the same is not applicable to the facts and circumstances of the present case. In the said decision, a Division Bench of this Court has held that the vacancies of the sanctioned posts in the Government Service, Public Sector undertakings, Private Institutions, getting aid, grant and assistance from the Government, should be filled up only by recruiting the candidates sponsored by the Employment Exchange. In the instant case, the Government have created neither any permanent post nor any sanctioned post to impart computer education in 1200 Government Higher Secondary Schools under the impugned Scheme. Therefore, the question of filling up of the posts by recruiting the persons sponsored by the Employment Exchange does not arise."

63. It is relevant to point out at this stage that while dismissing the said writ petition and holding that appointment of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Computer Instructors on contract basis without following the sponsorship of employment exchange and reservation is valid for the reason that those appointments were made not on the post created by the Government in accordance with law. The learned Judge has made a pertinent observation, which runs as follows:

> "25. The contention of the petitioners that the scheme of the Government violates the reservation policy of the Government also cannot be accepted as the rules of reservation are not applicable to the case in hand. When the Government have neither created nor sanctioned any permanent post under the Scheme to impart Computer Science in the Government Higher Secondary Schools, the question of adhering to the rules of reservation does not at all arise. However, in future, if the Government creates any permanent or sanctioned posts to impart Computer Science in Government Higher Secondary School no doubt such posts shall be filled up by recruiting candidates sponsored by the Employment Exchange and by following the rules of reservation."

64. Therefore, it remains the fact that as per the order of this Court which has become final, when the Government decides to create the posts in future, it is incumbent on its part to follow the policy of reservation, apart from the sponsorship through employment exchange. This is not in dispute. Now, it is relevant to note that admittedly, the Government by G.O.Ms.No.187 School Education dated 04.10.2006 has created 1880 posts of Computer Instructor on the regular pay scale. The operative portion of the G.O. runs as follows: (the G.O. which is in tamil, is in the following exact words)

> "The computer education scheme is implemented on the basis of contract in 1197 Government High Schools, the Government have decided to create one computer instructor for each school, in all Government/Corporation/Municipality High Schools, for purpose of implementing computer education scheme in all government High Schools. As per this decision, the Government hereby order to create 1880 posts of Computer Instructors on the scale of pay of Rs.5500-175-9000, at the rates of one Computer Instructors post for every school in all the 1880/Government/Municipality/ Corporation High Schools. All these posts are permitted, on temporary basis subject to the rules, in force and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

valid for one year from the date of its filling up."

65. It is also relevant that as per the said Government Order the expenditure directed to be incurred for the purpose of payment of salary to the newly created post of Computer Instructors to be posted at the rate one for each of the Government/Municipality and Corporation High Schools in respect of the expenditure to be spent by the Government is stated to be a new service, stating that the approval of legislative sanctioned will be obtained for expenditure and in the interregnum period the expenditure could be spent from unexpected expenditure fund, which is in the following words: (the G.O. which is in tamil, is in the following exact words)

> "3. The expenditure for this relates to a new service. In due course the approval of the Legislature would be obtained for this. In anticipation of this, the nature of this expenditure would be passed in orders/Finance (Va.Se.Thi.Po.) Department appointing the advance payment from unexpected expenditure fund. The Director of School Education is requested to send in prescribed form with 2 copies, the required application to Finance (Va.Se.Thi.Po) Department, for obtaining from unexpected expenditure fund. Moreover, the Director of School Education is requested to send the suitable opinion at the proper time, for annexing the above expenditure with grant."

66. Therefore, there is absolutely no difficulty to come to the conclusion that by virtue of G.O.Ms.No.187 dated 04.10.2006, the Government has created 1880 regular posts of Computer Instructors. While the said Government Order does not speak anything about restricting the said created post of 1880 Computer Instructors only to those who have been working as Computer Instructors on contract basis appointed in 1999 - 2000 as stated above, it is in the letter of the Secretary to Government addressed to the Director of School Education dated 04.10.2006 in letter No.188 which is impugned in the above writ petitions, it is stated that the creation of 1880 posts of Computer Instructors, was pursuant to the statement made by the Hon'ble Education Minister on the floor of the Assembly on 04.08.2006 to appoint the Computer Instructors appointed on contract basis in all the 1880 vacancies created on the basis of educational qualifications and by process of selection.

67. It is in that impugned letter dated 04.10.2006 the qualifications required for appointment of Computer Instructors in these 1880 newly created posts by the Government is stated as

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

1) B.E.Degree in Computer Science / E.C.E., E.E.E. from a recognized University or
2) B.Sc., Computer Science or
3) M.C.A. or
4) B.C.A. or
5) Any Degree from a recognized University in the state with one year P.G.Diploma course in Computer Application offered by a recognized University (However, stating that no B.Ed. Degree will be insisted)

The impugned order is challenged on the ground that when the Government has created the said posts to the extent of 1880 as Computer Instructors, it should be treated as appointment of Computer Teachers in the main stream in which case it requires the regular qualifications as per the statutory rules already framed and in existence for appointment of teachers in the Government High Schools and Higher Secondary Schools in the state of Tamil Nadu which require B.T. or B.Ed. degree as one of the required qualifications. In the circumstances that B.Ed. qualified candidates in Computer Science are available in large number and that the post have been created in accordance with law, it is only proper for the Government to make appointment in respect of these created posts from among the qualified candidates as per the rules in existence for appointment of teachers to the Government High School and Higher Secondary Schools. Therefore, the contention raised is that not only by restricting these created posts of 1880 only to those Computer Instructors who are in service on contract basis whose contract has already come to an end but also by restricting the appointment only to those persons who are appointed temporarily as Computer Instructors on contract basis who continue to be in service but without qualification of B.Ed. will not only amount to an arbitrary discrimination in showing undue favour to a group of candidates who are not qualified as per the general qualification required for the post of teachers in the Government High and Higher Secondary Schools but this would amount to regularization of illegal or irregular appointees, which would be invalid even if the same is sought to be done by way of a policy, since such policy is not only perverse but it is opposed to the basic tenets of the Constitution which enshrines the concept of equality as contemplated under Article 14 and 16(1) of the Constitution of India.

68. It is by way of answer to this contention, it is contended on behalf of the Government that by virtue of the earlier Government Orders namely G.O.Ms.No.588 dated 21.07.1995 and subsequent G.O.Ms.No.790 dated 06.11.1996 when the vocational component of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Computer Science was introduced in the general stream of education by appointing either Part Time Vocational Instructors or Full Time Vocational Instructors, the qualifications prescribed was exactly the same as it is prescribed by the impugned letter dated 04.10.2006 wherein B.Ed. qualification has never been a requirement, as far as the appointment of the Computer Instructors in the Government High Schools and Higher Secondary Schools.

69. Mr.Andhiarjuna, learned Senior Counsel appearing for the Government also in addition would rely upon another Government Order in G.O.Ms.No.7 School Education (BE) Department dated 04.01.2000 by which the Government has framed the adhoc rules in so as to apply the same to the Tamil Nadu School Education Subordinate Service including the holders of temporary post of Vocational Instructors for Computer Science sanctioned from time to time for the Government Higher Secondary Schools. The rules framed under the said Government Order runs as follows:

> "In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu makes the following rules:-
>
> 2. The rules hereby made shall be deemed to have come into force on the 6th Day of November 1996.
>
> RULES
>
> The General and Special rules applicable to the holders of permanent post in the Tamil Nadu School Education Subordinate service shall apply to the holders of the temporary posts of vocational Instructors for Computer Science sanctioned from time to time for the Higher Secondary Schools, subject to the notifications specified in the following rules:-
>
> 1. Constitution:-
>
> The post shall constitute a Separate Category in a separate class of the said service.
>
> 2. Appointment:-
>
> Appointment to posts shall be made as follows:-
>
> (i) by direct recruitment or
>
> (ii) by promotion from the post of Secondary Grade Teacher in the Tamil Nadu School Educational Subordinate Service or
>
> (iii) by transfer from any Class or Category; or
>
> (iv) by recruitment by transfer from any other service.
>
> 3. Appointing authority:-
>
> The appointing authority for the said post shall be

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the Joint Director of School Education (Higher Secondary)

4. Qualification:

(a) Age: No person shall be eligible for appointment to the post by direct recruitment if he/she has completed or will complete the thirty five years of age on the first day of July of the year in which the selection for appointment is made

(b) Other Qualifications: No person shall be eligible for appointment to the said post unless he/she possesses the following qualifications namely:

1. B.E. Degree in Computer Science and Engineering or Electronics and Communication or Electrical and Electronics Engineering from a recognized University in the state or a degree of equivalent standard or

2. B.Sc. Computer Science or one year post Graduate Diploma Course in Computer Application offered by recognized Universities or equivalent; or

3. Any Degree from a recognized University in the State or a degree of equivalent Standard with -

(i) One year Post Graduate Diploma Course in Computer Application offered by recognized Universities or equivalent; or

(ii) Diploma course in system analysis and Data processing offered by Annamalai University or equivalent; or (iii) Certificate on 'O' Level Examination conducted by department of Electronics or equivalent, or

(iv) Certificate course in Computer Programming conducted by recognized colleges and Universities for a period not less than six months or equivalent

5. Reservation of appointments:

The rule relating to reservation of appointments (General Rule (22)) shall apply for appointment to the post by direct recruitment.

6. Probation:

Every person appointed to the post shall, from the date on which he/she joins duty, be on probation for a total period of two years on duty within a continuous period of three years.

7. Pay:

There shall be paid to the holder of the post a monthly pay calculated in the scale of pay Rs.5500-175-9000

8. Saving Class:

Nothing contained in these rules shall adversely affect any persons holding the post on the date of issue

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

of these rules."

70. Therefore according to the learned Senior Counsel, even under the adhoc rules framed in 2000 the educational qualification required does not contemplate a B.Ed. degree. Therefore, according to him, from the beginning as far as the post of Computer Instructors in the Government schools are concerned, insisting of B.Ed. qualification has never been done by the Government which has not been questioned by any one and therefore, it is not open to the petitioners in these writ petitions to challenge the long followed statutory principles wherein for the purpose of Computer Instructors the B.Ed. qualification has been dispensed with as matter of policy and therefore, according to the learned Senior Counsel the impugned letter is only in continuation of the statutory rule in G.O.Ms.No.7 dated 04.01.2000.

71. It is relevant to note that the said G.O.Ms.No.7, dated 04.01.2000 which no doubt does not stipulate the relevancy of a B.Ed. degree in Computer Science but at the same time it states in categoric terms that the rules relating to reservation and appointment as stipulated in general Rule 22 shall be applied to the post of direct recruitment. Further, the said G.O.Ms.No.7 refers about all the earlier Government Orders including G.O.Ms.No.588 dated 21.07.1995 and G.O.Ms.No.790 dated 06.11.1996. The said Government Orders are all relating to the appointment of Part Time Vocational Instructors who were converted into Full Time Vocational Instructors in respect of the vocational courses including the Computer Science being the vocational component under the general stream. Admittedly, as it is seen in G.O.Ms.No.790 dated 06.11.1996 the Full Time Vocational Instructors in the Government Higher Secondary Schools numbering 117 are in existence even as on today. Therefore, there is absolutely no difficulty to come to the conclusion that what is stated in G.O.Ms.No.7 dated 04.01.2000 which is in continuation of the earlier Government Orders in G.O.Ms.No.790 dated 06.11.1996 and G.O.Ms.No.588 Education Science and Technology (VE) Department dated 21.07.1995 are all relating to the said 117 posts of Vocational Instructors on Computer Science in the Government Higher Secondary Schools. The question now is as to whether the creation of 1880 posts of Computer Instructors under G.O.Ms.No.187 dated 04.10.2006 is in respect of the appointment of full time or part time Vocational Instructors to computer education. A bare reading of G.O.Ms.No.187 dated 04.10.2006 no where states that the intent and purport of creation of 1880 posts of Computer Instructors to be appointed in every one of the Government High and Higher Secondary Schools is for the purpose of appointing them as Vocational Instructors. The post of vocational instructors when

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

there were made as full time to teach the vocational component of Computer Science in the general stream is available even now.

72. On the other hand, the purpose of appointment of 1880 posts of Computer Instructors is to impart education on Computer Science in the general stream and not on vocational basis. A reading of the Government Order shows that it is not for the purpose of creating more number of vocational instructors on Computer Science. In fact it is relevant to point out at this stage that the Computer Instructors appointed on contract basis through ELCOT in the year 1999 - 2000 were never appointed as vocational instructors and that is not the case of the respondents also. Therefore, the contention raised on behalf of the respondents that for the purpose of vocational instructors either on full time or part time basis in the Government High and Higher Secondary Schools in these years B.Ed. degree is not insisted and therefore, for the purpose of regularly instituted and created posts also, it is open to the Government to dispense with the requirement of B.Ed. is apparently not sustainable. It is relevant in the present context to note that it is not the case of the Government that no sufficient number B.Ed. qualified candidates in Computer Science are available for the purpose of appointment of Computer Instructors on regular basis in the Government Higher Secondary Schools.

73. As I have stated earlier and at the risk of repetition I am bound to state that the creation of the 1880 post of Computer Instructors is in addition to the already existing vocational instructors numbering 117 as on date, which may even be increased in course of time by the Government, which is well within its powers. When once the creation of 1880 post of Computer Instructors is on a general stream of education, the adhoc rules framed under Article 309, which applies only to vocational instructors, cannot have any application for the appointees under the general stream.

74. It is in this regard relevant to note that Government passed G.O.Ms.No.46 School Education Q.2 Department dated 14.05.2004 while implementing the syllabus for standards VI to XII based on the expert committee report states that one of the objects of the Government Order is "to introduce Computer science as one of the subject from IX standard to start with and later on be extended from VI to VIII standards". As per the said Government Order the Government has introduced the newly recognized groups as mentioned in Annexure I in the academic stream as per the principles of curriculum. Annexure I of the said Government Order which is clearly stated to be in the academic stream in contra to vocational stream states that out of 5 groups in all the 4 groups Computer

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Science has been made as optional subject. The Annexure I of G.O.Ms.No.46 dated 14.05.2004 states as follows:

Annexure I

"Groups in Higher Secondary stage: (XI and XII):

Part I:

Each student should choose one group of study which consists of four subjects under Part III. Including three core subjects and one optional subject except Group II A.

Group I:

1. Mathematics 2. Physics 3. Chemistry 4. Optional: Biology / Computer Science / Statistics / Bio-Chemistry / English for communication / Home Science.

Group II:

1. Physics 2. Chemistry 3. Biology 4. Optional: Micro-Biology/Bio-Chemistry/Nursing/Nutrition& Dietetics/Computer Science / English for Communication / Home Science

Group II(A):

1. Physics 2. Chemistry 3. Botany 4. Zoology

Group III:

1. Accountancy 2. Commerce 3. Economics 4. Optional: Business Mathematics/ Computer Science/ Statistics / English for Communication/ History / Political Science / Ethics and Indian Culture / Advanced Language (Tamil).

Group IV:

1. History 2. Economics 3. Geography 4. Optional: Political Science / Computer Science / Statistics / English for Communication / Ethics and Indian Culture / Advanced Language (Tamil)"

75. Therefore, it is clear that the Computer Science has become an academic subject in all the groups except in group II(a) consisting of Physics, Chemistry, Botany and Zoology. The Annexure I which is applicable to XI and XII standards does not say that 4 subjects in part 3 are vocational in nature. On the other hand, it is relevant to point out that in Annexure II to G.O.Ms.No.46 dated 14.05.2004 which is applicable to VI to X standard, they continue to use the term vocational subjects as inclusive of related subjects. In addition to that in the letter of the Director of Government Examination addressed to all the Headmasters of Higher Secondary Schools, it is clearly stated that among the general stream of subjects (Academic) the vocational subjects shall not be included stating the following as vocational subjects, namely, Banking, Electrical Domestic Appliances Repair and Maintenance, Electrical Motor Rewinding, Electronics, General Insurance, General Machinist,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Office Management, Radio and Television Maintenance and Repairs, Typewriting thereby consciously omitting the subject Computer Science. Therefore, it is clear that the Government has consciously taken a decision to include the Computer Science as an academic subject under the main stream, which is seen through out on the facts and circumstances of the case which I have narrated above. When that is the case, there is absolutely no difficulty to come to the conclusion that the respondents cannot defend themselves either by relying upon G.O.Ms.No.7 dated 04.01.2000 or G.O.Ms.No.588 dated 21.07.1995 or for that matter G.O.Ms.No.790 dated 06.11.1996 which are applicable only to the vocational subjects.

76. In respect of the general stream, it is not in dispute that the Rules are framed as per G.O.Ms.No.720 Education dated 28th April 1981 for the Tamil Nadu Higher Secondary Educational Service which consist of the teachers in academic subjects also. The said Government Order, which is statutory in its character, apart from narrating the persons who are the appointing authorities also states the necessity of reservation of appointments in Rule 4, which runs as follows:

> "4. Reservation of Appointments.- The rule of reservation of appointments (General Rule 22) shall apply to appointments by direct recruitment to all the categories in Class II and Class III of the service, the appointments to each category being treated as one unit."

It also states about the qualification and age, which runs as follows:

> "6. Qualification as to age.-
> No person shall be eligible for appointment by direct recruitment to any of the category specified in column (1) of the table below, if he/she has completed the age specified in the corresponding entries in column (2) thereof:-

THE TABLE

Name of the Category	Age
1. Teachers in Academic subject	(a) 40 years for teachers employed in any school recognised by the Director of School Education; and (b) 35 years for others.
2. Teachers in Languages	(c) 40 years for Teachers employed in any school recognised by the Director of School Education; and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. Physical Directors and Physical Directresses in Higher Secondary Schools.	(a) 40 years for teachers employed in any school recognised by the Director of School Education; and (b) 35 years for others."

77. It states in Rule 7 that no person who is not possessing educational qualification shall be appointed in various posts including Headmasters, Teachers in academic subjects, etc. While stating about the qualifications about the teachers in academic subjects, which may be either direct recruitment or recruitment by transfer the qualification states as follows:

> "Teachers in Academic Subjects.
>
> Direct Recruitment and Recruitment by Transfer.
>
> (i) A Master's Degree of a University in the State or a Master's Degree of equivalent standard in the subject in respect of which recruitment is made:
>
> Provided that other things being equal preference shall be given to those who have studied the same subject in which he/she has obtained the Post-graduate Degree, as Main subject under Part III in the Bachelor's Degree level.
>
> Provided further that persons holding the certificate issued by the University of Madras for having undergone the Certificate course in Science and Humanities for graduate teachers in high schools shall be considered for appointment as Teachers in the subject relating to Science and Humanities;
>
> Provided also that for appointment to certain subjects in which Master's Degree are not awarded, persons possessing Master's Degree in other subjects as may be considered by the Director of School Education, shall be considered; and
>
> (ii) B.T. or B.Ed. Degree of University in the state or a teaching Degree of equivalent standard."

78. Therefore, for the purpose of appointment of teachers in the academic subjects in addition to the degree in the respective subjects a person is necessarily to have B.T. or B.Ed. degree of the University. This rules relating to the appointment in the Higher Secondary Schools on academic subjects remain in force as on date. Therefore, it is clear that as per the said statutory rules which are in existence in respect of teachers in the academic subjects, it is not only the policy of reservation but also the qualification which mandates the requirement of B.Ed. That apart, necessarily the relevant provisions regarding employment exchange has to be

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

followed, which is a statutory compulsion. On the facts and circumstances of the case it is not in dispute that the Computer Instructors who have been appointed on contract basis in the year 1999 - 2000 and whose appointment are sought to be made on regular basis under the impugned notification are certainly not in conformity with any of the rules of the special rules of the Tamil Nadu Higher Secondary Education Services.

79. It is in this background, namely, in the presence of a specific statutory service rules for appointment of teachers in the Government Higher Secondary Schools in the state whether by name they are called as Computer Instructors or otherwise, it is certainly not open to the respondents to fill up the 1880 posts of Computer Instructors created by Government Order in G.O.Ms.No.187 dated 04.10.2006 except by following the above said rules.

80. A bare reading of the letter of the Government Secretary dated 04.10.2006 addressed to the Director of School Education states as if the Government has taken a decision to appoint all the 1880 posts of Computer Instructors created under G.O.Ms.No.187 dated 04.10.2006 only from the Computer Instructors appointed on contract basis through ELCOT in 1999-2000 shows that not only the same does not appear to be the purport of the G.O.Ms.No.187 dated 04.10.2006 but also even if such a decision is taken as a policy of the Government the same cannot be approved, since the same is against the statutory service regulations. That apart a reading of the impugned letter dated 04.10.2006 shows that the intention of filling up the entire vacancies of 1880 Computer Instructors is in effect to regularize the Computer Instructors appointed on contract basis, whose term has admittedly come to an end in September 2005. Even though it can be an acceptable argument as contended by the learned Senior Counsel for the Government that after the termination of the contract those Computer Instructors were continued at the cost of the Government exchequer in the interest of the students, the same can certainly be taken as a policy as an interim measure and that cannot be perpetuated and such interim measure can only be subject to final decision to be taken in making regular appointment in accordance with the existing statutory regulations.

81. Therefore, after the 1880 posts of Computer Instructors are created in accordance with law it is not open to the respondents to continue the adhoc arrangements or to restrict the right of participation in the selection process only to the limited group of persons when qualified persons as per the statuary rules are available in large numbers and such policy of restricting the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

selection process can only be treated as perverse and basically in violation of Article 14 and 16(1) of the Constitution of India.

82. It is in this context relevant to note the judgement of the Hon'ble Supreme Court rendered in Secretary of Karnataka and others Vs. Umadevi and others reported in 2006(4) SCC 1. This is relevant because the vehement contention raised on behalf of the Government was that the Government has got equal responsibility to protect the interest of the Computer Instructors appointed on contract basis in 1999-2000, at the time when there were dearth of qualified candidates and in effect these Computer Instructors have given a strong support for the development of Computer Education in the state so as to make the state of Tamil Nadu as equivalent to any other states, which is equally developed in this regard, but the question remains to be considered is as to whether a person who has remained as adhoc or temporary employee can claim regularization as a matter of right. Even assuming that at the time these Computer Instructors were appointed based on a selection process, as rightly contended by the learned counsel for the respondents such selection has not been done by the Government which is appointing authority and certainly the policies of the Government regarding reservation and sponsorship through employment exchange have never been followed. It is only now pursuant to the creation of the posts, the selection process comes into effect in a legal manner.

83. In such circumstances when there is a violation of the fundamental right of the equality guaranteed under Article 14 of the Constitution of India, even by way of the policy of the Government the Court cannot be expected to remain silent. The ruling of the Hon'ble Supreme Court in this regard in the said judgement reported in 2006(4) SCC 1 which remains to be basic law of the land is as follows:

> "43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgement, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the state the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

84. In addition to the same as I have enumerated above in the order of the Hon'ble Justice P.D.Dinakaran dated 23.04.1999 passed in W.P.No.6564 of 1999 reported in 1999(2) CTC 127 in the case of E.Chandravathanam and 4 others Vs. State of Tamil Nadu rep.Education

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Department, Fort St.George, Chennai-9 and 2 others, it was made clear that in future if the Government creates or sanctions any permanent post it must adhere to the rules of reservation, etc.

85. Therefore, there is no difficulty to come to the conclusion that the impugned letter No.188 dated 04.10.2006 cannot be sustained. In the light of the above said findings, I do not think it is necessary to consider as to whether the Computer Instructors appointed on contract basis in 1999-2000 have been legally appointed or not. The only question to be answered is even assuming that their appointments on contract basis were legal in the admitted position that the contract has already been terminated, there is no question of giving exclusive preference to those candidates alone, while denying the same to others who are waiting in large numbers with necessary qualifications as per the statutory rules. It may be understandable even if the policy of the Government is that a portion of the said Computer Instructors post created under G.O.Ms.No.187 dated 04.10.2006 are allotted to the existing Computer Instructors appointed on contract basis, on the basis of equity and stipulated in the Government Order. But the illegality of the action of the respondents become grave when the opportunities has been exclusively given to those candidates who have been appointed on contract basis as Computer Instructors totally depriving the qualified candidates.

86. It may be the fact that these Computer Instructors have done excellently well, but the question which remains to be answered is that the Government has equal responsibility to see that the qualified persons are appointed, especially in the circumstances that the statutory rules are in existence. However, it is always open to the Government to allot a particular percentage of seats to these candidates considering their rich experience either by way of specific exemption from required qualification in individual cases or by way of providing an opportunity to them to undergo the said course in B.Ed. within a stipulated period.

87. In the presence of the specific service rules if the concept of equity in appointment and recruitment is to be followed the same will result in inequality even it comes out of the policy as it was held by the Hon'ble Supreme Court in Ahamadabad Municipal Corporation Vs. Veerandrakumar Jesibai Pattel reported in JT 1997(7) SC 14. The Hon'ble Supreme Court in this regard has held as follows:

"5. The second reasoning given by the tribunal in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

issuing direction to the Corporation for absorbing the respondent in its permanent service which was not touched upon by the High Court is that the case of the respondent requires sympathetic consideration, as presumably the respondent has been visiting the Corporation's Clinic since early seventies, remains to be considered. As noticed earlier, the recruitment of the doctors in the clinic run by the Corporation is made in accordance with the statutory rules and by no other method. Under the rules the vacancies are advertised for inviting applications from eligible candidates. After the applications are received the Selection Committee is constituted to select the candidates for appointment in the Corporation's clinic. Only after the candidates are selected they are taken in the service. It is also noticed earlier that respondent appeared before the Selection Committee but was not selected. Under such circumstances, there is no room for sympathy or equity in the matter of such appointment specially where the recruitment in service is governed by the statutory rules. If the reasoning given by the tribunal is accepted, the statutory recruitment rules would become nugatory or otiose and the department can favour any person or appoint any person without following procedure provided in the recruitment rules which would lead to nepotism and arbitrariness. Once the consideration of equity in the face of statutory rules is accepted then eligible and qualified persons would be sufferers as they would not get any chance to be considered for appointment. The result would be that persons lesser in merit would get preference in the matter of appointment merely on the ground of equity and compassion. It is therefore not safe to bend the arms of law only for adjusting equity. We, therefore, find that the reasoning given by the tribunal that sympathy demands the absorption of the Corporation suffers from error of law."

88. Even the policy of the Government has to be tested in the touch-tone of Article 14 and 16 of the Constitution of India as held by the Hon'ble Supreme Court in Kailash Chand Sharma etc. Vs. State of Rajasthan and others reported in JT 2002(5) SC 591. The dictum laid down by the Hon'ble Supreme Court in this regard, are as follows:

"12. The first and foremost question that would arise

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

for consideration in this group of appeals is, whether the circular dated 10.06.1998 providing for bonus marks for residents of the concerned district and the rule areas within that district is constitutionally valid tested on the touch stone of Article 16 read with Article 14 of the Constitution? It is on this aspect, learned senior counsel appearing for the candidates concerned have argued at length with admirable clarity, making copious reference to several pronouncements of this Court. There can be little doubt that the impugned circular is the product of the policy decision taken by the state government. Even then, as rightly pointed out by the High Court, such decision has to pass the test of Article 14 and 16 of the Constitution. If the policy decision, which in the present case has the undoubted effect of deviating from the normal and salutary rule of selection based on merit is subversive of the doctrine of equality, it cannot sustain. It should be free from the vice of arbitrariness and conform to the well settled norms both positive and negative underlying Articles 14 and 16, which together with Article 15 form part of the Constitutional code of equality."

89. In view of the above said reasons, I am of the considered view that the impugned circular in Letter No.188 dated 04.10.2006 of the first respondent the Secretary to Government, Education Department is unsustainable and is quashed and the writ petitions in W.P.(MD).Nos.43897, 11442, 11692 of 2006, W.P.No.47132 of 2006 and 30898 of 2005 stand allowed and all other writ petitions are dismissed. No Costs. Consequently, the connected M.Ps.are closed.

nbj

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

1. The President
Teacher Recruitment Board,
4th floor, E.V.K.Sampth Maligai,
DPI Complex, College Road,
Chennai

2. The Secretary to Government,
School Education, Higher Secondary
Department, Fort St. George,
Chennai-9.

3. The Secretary to Government,
Department of School Education,
Secretariat, Chennai - 9.

4. The Chief Educational Officer,
Erode.

5. The Director,
Electronic Corporation of Tamil Nadu Limited,
692, Anna Salai, Nandanam,
Chennai - 35.

6. The Chief Educational Officer,
Kancheepuram.

7. The Director of Higher Education,
Nungambakkam, College Road,
Chennai 6.

8. The Secretary to Government,
(Higher Education)
Education Department,
Fort St.George, Chennai -9.

9. The Chief Educational Officer,
Cuddalore.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

10.The Secretary to Government,
Education Department,
Secretariat, Chennai - 9.

11. The Member Secretary,
Teacher Recruitment Board,
Chennai - 6.

12. The Chairman Teachers Recruitment Board,
E.V.K.Sampath Building,
DPI Complex, College Road,
Chennai.6

13. The Director,
Teacher Recruitment Board,
E.V.K. Sampath Maligai,
DPI Compound, College Road,
Chennai - 6.

14. The Chief Educational Officer,
Nagercoil, K.K. District.

15. The Chief Educational Officer,
Perambalur District.

16. The Directorate of School Education,
(Higher Education-II) Department,
No.4 EVK Sampath Building,
College Road, Chennai-6.

17. The Joint Director,
Joint Director for Higher
Secondary Education, Chennai.

18.The Director of School Education
College, Road, Chennai-6.

19. The Director of High Secondary
Education, Department of School Education,
Chennai-6.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

20. The Chief Educational Officer,
Tirunelveli.

21. The Chief Educational Officer,
Trichy.

22. The Chief Educational Officer,
Salem

23. The Chief Educational Officer
Thiruvallur.

24. The Chief Educational Officer,
Saidapet, Chennai-15.

25.The Director of Govt Examination
Chennai-6.

26. The Director, Professional Employment
& Executive Office, No. 140, Santhome
High Road, Ground Floor,
Slum Clearance Board,
Chennai-4.

27. The Chief Educational Officer,
Virudhunagar,

28. The Secretary, Labour & Employment
Department, Fort St George,
Chennai-9.

29. The Head Master,
TVS Govt Higher Secondary School,
Tirukkarungudi, Thirunelveli.

30. The Head Master
The Govt Boys Hr Secondary School,
Marathandam,
Kanyakumari District.

31. The Head Mistress
Govt Higher Secondary School,
Vembadithalam, Salem.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

32. The Head Master,
Govt Hr. Secondary School,
Maduravoyal, Chennai-95

33. The Headmaster, Govt Boys
Higher Secondary School, Mechari,
Salem.

34. The Headmistress
M.N.S Govt girls Hr. Sec School,
Attaiyampatti, Salem.

35. The Head Master,
Govt Hr. Sec School, Pannapatti,
Salem.

36. The Head Master,
Government Boys Hr Sec School,
Elite Software System Pvt Ltd,
Kilpauk,
Chennai-10.

37. The Headmaster
Govt Boys Higher Secondary School,
Anthiyur, Bhavani Taluk,
Erode.

38. The Chief Educational Officer,
Karur District.

39. The Headmaster, Govt Hr Sec School,
Esanathur, Karur.

40 The Headmaster, Govt Higher Secondary
School, Kaniyalampatti, Karur.

41. The Headmaster,
Govt Higher Secondary School,
Aravakurichi, Karur,

42. The Headmaster,
Govt Higher Secondary School,
Car street, Karur.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

43. The Headmaster,
Govt Higher Secondary School,
Vilavancode, K.K. District.

+ 1 cc to Mr.Gladys Daniel, Advocate, SR No.15326

+ 1 cc to Mr. S. Mani, Advocate, SR No.15903

+ 1 cc to Mr. K. Premkumar, Advocate, SR No.15795

+ 1 cc to Mr. A. Jenasenan, Advocate, SR No.15394

+ 1 cc to GP , Advocate, SR No.15582

+ 1 cc to Mr. S. Natarajan, Advocate, SR No.15160

+ 1 cc to Mr. R. Natarajan, Advocate, SR No.15690

+ 1 cc to Mr. A. Thirumurhty, Advocate, SR No.15497

+ 1 cc to Mr. G. Ethirajulu, Advocate, SR No.15475

+ 1 cc to Mr. I.C. Vasudevan, Advocate, SR No.15511

+ 1 cc to Mr. Devadasan, Advocate, SR No.15415

+ 1 cc to Mr. Hidyathullakhan, Advocate, SR No.15875

+ 1 cc to Mr. N. Isabella, Advocate, SR No.15424

+ 1 cc to Mr. C. Prakasam, Advocate, SR No.15763

+ 1 cc to Mr. D. Sadhavsivam, Advocate, SR No.15628

+ 1 cc to Mr. R. Thamaraiselvan, Advocate, SR No.15480

+ 1 cc to Mr. C. Ravichandran, Advocate, SR No.15885

+ 1 cc to Mr. V. Ayyadurai, Advocate, SR No.15627

+ 1 cc to Mr. J. Rajmohan, Advocate, SR No.15661

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

+ 1 cc to Mr. G. Thalamutharasu, Advocate, SR No.16079

+ 1 cc to Mr. R. Saravanakumar, Advocate, SR No.16199

+ 3 ccs to Mrs. Hema Sampath, Advocate, SR No.15656

order in
W.P.Nos.50371 of 2006 &
etc., batch

KLT(CO)
SR, RVL, SG,
GP, NM/22.5.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/